

**1999**

**HOUSE  
SMALL BUSINESS  
COMMITTEE**

**MINUTES**

**HOUSE COMMITTEE**

**ON**

**SMALL BUSINESS**

**1999 SESSION**

**Rep. Daniel T. Blue, Jr.**  
**Chair**

**Lin Threatt**  
**Committee Assistant**

**HOUSE COMMITTEE ON SMALL BUSINESS  
1999-2000**

| <b>MEMBER</b>           | <b>ASSISTANT</b> | <b>PHONE</b> | <b>OFFICE</b> | <b>SEAT</b> |
|-------------------------|------------------|--------------|---------------|-------------|
| BLUE, Daniel, Chair     | Lin Threatt      | 715-2528     | 1227 LB       | 80          |
| ALLEN, Gordon           | Lillie Pearce    | 733-5662     | 530 LOB       | 10          |
| BRIDGEMAN, John         | Joyce Langdon    | 733-5662     | 1204 LB       | 94          |
| COLE, E. Nelson         | Suzanne Smith    | 733-5779     | 1218 LB       | 45          |
| FOX, Stan               | Mary Capps       | 733-5757     | 1217 LB       | 46          |
| HIATT, William          | Edna Pearce      | 733-5862     | 1008 LB       | 63          |
| MORRIS, Amelia          | Joy Feagin       | 733-5741     | 1315 LB       | 115         |
| NYE, Edd                | Jo Bobbitt       | 733-5477     | 639 LOB       | 1           |
| OLDHAM, Warren          | Delta Prince     | 715-3026     | 403 LOB       | 58          |
| RAYFIELD, John          | Gail Musser      | 733-5823     | 1305 LB       | 114         |
| SETZER, Mitchell        | Debbie Puckett   | 733-5886     | 1015 LB       | 117         |
| TALLENT, Timothy        | Joyce Bulluck    | 733-5934     | 1104 LB       | 26          |
| WALEND, Trudi           | Ken Walend       | 715-3012     | 418A LOB      | 119         |
| WARREN, Edith, V. Chair | Nancy Willis     | 715-3019     | 417A LOB      | 93          |

EX-OFFICIO MEMBERS: Representatives Joseph Hackney, Philip Baddour, Beverly Earle, Andrew Dedmon, W. Pete Cunningham

**HOUSE COMMITTEE ON SMALL BUSINESS**  
**1999-2000 Session**



Rep. Daniel Blue, Jr.  
Chair



Rep. Gordon Allen



Rep. John Bridgeman



Rep. E. Nelson Cole



Rep. Stanley Fox



Rep. William Hiatt



Rep. Mia Morris



Rep. Edd Nye



Rep. Warren Oldham



Rep. John Rayfield



Rep. Mitchell Setzer



Rep. Timothy Tallent



Rep. Trudi Walend



Rep. Edith Warren  
Vice Chair

(1999-2000)

NORTH CAROLINA GENERAL ASSEMBLY  
COMMITTEE SUMMARY REPORT

| 1999-2000 Biennium |             | HOUSE: SMALL BUSINESS               |                                 | Valid Through 2-AUG-1999 |                 |
|--------------------|-------------|-------------------------------------|---------------------------------|--------------------------|-----------------|
| BILL               | INTRODUCER  | SHORT TITLE                         | LATEST ACTION ON BILL           | IN DATE                  | OUT DATE        |
| H1028              | HURLEY      | REGULATE CASH CONVERTERS            | H - REF TO COM ON SMBUS         | 04-14-99                 |                 |
| H1230              | ADAMS       | LIVEABLE STATE MINIMUM WAGE         | H - REF TO COM ON SMBUS         | 04-15-99                 |                 |
| H1247              | CANSLER     | PROFESSIONAL EMPLOYER ORGANIZATIONS | H - REF TO COM ON SMBUS         | 04-15-99                 |                 |
| <b>H1277=</b>      | <b>COLE</b> | <b>PHARMACY CHOICE/COMPETITION</b>  | <b>*H -RE-REF COM ON APPROP</b> | <b>04-15-99</b>          | <b>04-23-99</b> |
| <b>H1277=</b>      | <b>COLE</b> | <b>PHARMACY CHOICE/COMPETITION</b>  | <b>*H -RE-REF COM ON APPROP</b> | <b>06-30-99</b>          | <b>07-07-99</b> |
| S 41               | REEVES      | REQUIRE RENTAL PROPERTY HEAT        | *R -CH. SL 99-0014              | 02-25-99                 | 03-11-99        |
| S 660              | CLODFELTER  | REVISED LIMITED LIABILITY CO. ACT   | *R -CH. SL 99-0189              | 04-23-99                 | 05-27-99        |
| S 785              | ALBERTSON   | REGULATION OF LP GAS                | *R -CH. SL 99-0344              | 04-28-99                 | 07-07-99        |

NOTES- = AFTER BILL NUMBER SHOWS THAT BILL IS IDENTICAL, AS INTRODUCED, TO ANOTHER BILL.  
 \* AFTER NUMBERS INDICATES THAT TEXT OF BILL WAS ALTERED BY ACTION ON THE BILL.  
 BOLDDED LINE INDICATES BILL INDEXED AS AFFECTING APPROPRIATIONS.

**NORTH CAROLINA HOUSE OF REPRESENTATIVES  
COMMITTEE MEETING NOTICE**

You are hereby notified that the Committee on **SMALL BUSINESS** will meet as follows:

**DAY & DATE:**      **Wednesday, March 10, 1999**

**TIME:**              **12:00 noon**

**LOCATION:**         **421 LOB**

The following bills will be considered (Bill # & Short Title):  
**SB 41 Require Rental Property Heat**

Respectfully,

Representative Dan Blue  
Chairman

I hereby certify this notice was filed by the committee assistant at the following offices at **10:30am on March 5, 1999.**

\_\_\_\_ Principal Clerk  
\_\_\_\_ Reading Clerk - House Chamber

Lin Threatt (Committee Assistant)



# **AGENDA**

## **HOUSE COMMITTEE ON SMALL BUSINESS**

**March 10, 1999**

**Room 421 LOB**

**12:00 noon**

### **Opening Remarks**

**Rep. Dan Blue, Chair**

**Rep. Edith Warren, Vice Chair**

### **Introductions**

**Committee Members**

**Staff Attorneys**

### **Discussion**

**SB 41 Require Rental Property Heat**

### **Closing Remarks**

### **Adjournment**

## HOUSE SMALL BUSINESS COMMITTEE

### Minutes

March 10, 1999

The House Committee on Small Business met on March 10, 1999 in Room 421, Legislative Office Building. The following members were present: Rep. Dan Blue, Chair, Rep. Edith Warren, Vice Chair, Representatives John Bridgeman, Nelson Cole, Stanley Fox, William Hiatt, Edd Nye, John Rayfield, Mitchell Setzer, and Trudi Walend.

Rep. Blue called the meeting to order at 12:02pm and welcomed the members and visitors. Rep. Blue stated that they could create some excitement on this committee given the fact that 85% of jobs created in the last decade are small businesses, and that a lot of the issues that can be addressed in this session are things that improve the climate for small businesses. He then stated that they could encourage further development by bringing forth their ideas that the committee can address. He then asked each person to introduce themselves and give a history of their background beginning with Vice Chair, Rep. Edith Warren, staff attorneys, Walker Reagan and Rick Zechini, committee members, House Sergeant at Arms, Maxine Holley, House Clerk Assistant, Bobbie Poole, Committee Assistant, Lin Threatt, Pages, Ashley Smith and Afton McCullough, and himself.

Senate Bill 41 – Require Rental Property Heat was before the committee. Rep. Blue asked that Senator Eric Reeves, one of the bill's sponsors, give a history of the bill and its impact. Sen. Reeves stated that in 1994 while serving on the Raleigh City Council he served on a task force to look at issues facing the quality of housing in the Raleigh area. They found that the majority of rental properties in this area did not contain adequate heating. The task force made a recommendation to put in a heating requirement. He discussed the fact that Charlotte, Asheville, Greensboro, and Greenville already had a heating ordinance, and that he wanted to include Raleigh. Sen. Reeves also stated that the bill was introduced last year but was held up in the Rules Committee, so he wanted to try again this year. Sen. Reeves explained that this bill will not impact the City of Charlotte, but only the City of Raleigh.

Rep. Blue pointed out that the reason this bill has not been treated as a local bill is due to drafting styles that uses a general bill, that is a statewide bill, that narrowly defines the subject matter so it only applies to a very limited number of people. He went on to say that this is why the bill only covers cities of 200, 000 or more so that we could do it as a statewide bill. It is prohibited to do it as a local bill because the constitution prohibits us from passing legislation affecting the health and safety of the population on local bills.

Rep. Rayfield was recognized and he stated that his question had been asked regarding the bill draft style. Rep. Walend asked the question who would enforce it? Sen. Reeves responded that the requirement would be enforced by the housing enforcement group within the City of Raleigh, and residents could also make complaints to the City Council. Rep. Walend then asked the question would it be something that building inspectors would enforce? Sen. Reeves responded that there is an enforcement section that could handle this. Rep. Fox asked if this would apply to a home or warehouse that is currently being used for the sole purpose of storage? Sen. Reeves responded that it would only apply to homes being used for rental purposes, so it would probably apply to that. Rep. Fox asked if a building was being used for storage purposes would it have to have a central heating unit? Sen. Reeves stated that on line nine the bill states that "every dwelling unit" simply refers to any building rented out for dwelling purposes. Rep. Nye referred to line twelve of the bill which states "habitable". Rep. Setzer made a motion that at the appropriate time he would like to move for a favorable report for SB 41. Rep. Bridgeman asked Sen. Reeves if strip board heat would be in violation of the bill? Sen. Reeves stated that the technical aspects of the bill were drafted in conjunction with the City Inspector's Office in a way that would meet Raleigh's housing code. Sen. Reeves stated that they did not want to get into all the different types of heat, and therefore tried to keep the bill as general as possible. Rep. Bridgeman stated that many homes have baseboard heat and therefore would be in violation. He asked that Sen. Reeves check into it. Rep. Blue asked the staff attorneys for their opinion on whether the bill as currently worded precluded the use of electric base board heating? Attorney Walker Reagan said that it appeared that it would, and he would look at the Charlotte ordinance to compare it. Rep. Rayfield asked Rep. Bridgeman could not a central heating system be located in each room? Rep. Bridgeman responded that a central heating unit has ducts. Electric baseboard heating or an electric strip is not considered the same thing. Rep. Rayfield asked if you had electric heat in one room could that not be considered central? Rep. Bridgeman said that it should be worded "other" than "central heat".

Rep. Cole asked Sen. Reeves if the effective date, January 2000, could it be moved up so that people would be covered through November and December 1999? Sen. Reeves responded by stating that he wanted to give the rental community time to comply. Rep. Cole asked if Sen. Reeves would accept an amendment to move the date up to November 1, 1999. Sen. Reeves stated that this is a delicate situation and would rather keep the date as is. Rep. Blue asked Sen. Reeves why the inspections department has not made provisions for electric space heaters? Sen. Reeves said he did not know, and that any changes would require that he go back to the inspections department.

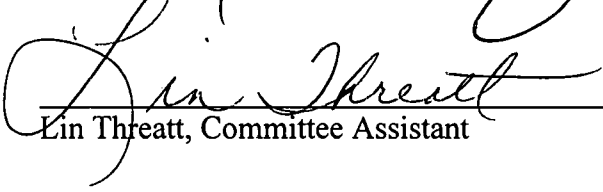
Rep. Bridgeman stated that there seems to be a difference in the bill analysis and the actual bill. Rep. Blue then asked, other than kerosene heating what other types of heating are there that would heat one room? Rep. Bridgeman answered, there are gas and space heaters; the only thing that has been overlooked are the electric heaters.

Sen. Reeves stated that he would have Walker Reagan, staff attorney, talk with Rep. Bridgeman about changing the wording to add "electric heat" in the bill, and would go back and talk with the city inspectors. Rep. Blue then stated that Rep. Bridgeman was sending forth an amendment and moves to amend SB 41, page 1, line 10 by inserting between the words "central" and "heating" the words "or electric." The committee then moved for the adoption of the amendment. Rep. Rayfield moved that SB41 be rolled over into a committee substitute with the amendment engrossed into the bill and that it be given a favorable report, and that the original be given an unfavorable report. The committee voted unanimously in favor of the motion.

The meeting adjourned at 12:45pm.



Representative Daniel T. Blue, Jr., Chair



Lin Threatt, Committee Assistant

**1999 COMMITTEE REPORT  
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **BLUE** for the Committee on **SMALL BUSINESS**.

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☐ Committee Substitute for

S.B. 41 A BILL TO BE ENTITLED AN ACT TO REQUIRE THAT EVERY DWELLING UNIT LEASED AS RENTAL PROPERTY IN CERTAIN CITIES BE FURNISHED WITH A SOURCE OF HEAT.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ .

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ .

☒ With a favorable report as to <sup>house</sup> committee substitute bill (# ), ☐ which changes the title, unfavorable as to (original bill) (~~Committee Substitute Bill #~~ ), (and recommendation that the committee substitute bill # ) be re-referred to the Committee on  .)

☐ With a favorable report as to House committee substitute bill (# ), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/24/99

FOR JOURNAL USE ONLY

\_\_\_\_ Pursuant to Rule 36(b), the bill is placed on the Calendar of \_\_\_\_\_.

\_\_\_\_ The (committee substitute) bill/resolution (, as amended,) is (ordered engrossed and) re-referred to the Committee on \_\_\_\_\_.

\_\_\_\_ The bill/resolution is re-referred to the Committee on \_\_\_\_\_.

\_\_\_\_ On motion of (Rep. \_\_\_\_\_,) (the Chair,) the (committee substitute) bill/resolution is (ordered engrossed and) re-referred to the Committee on \_\_\_\_\_.

\_\_\_\_ Pursuant to Rule 36(b), the (House)committee substitute bill (No. \_\_\_\_)/resolution is placed on the Calendar of \_\_\_\_\_. (The original bill) (House Committee Substitute Bill No. \_\_\_\_)/resolution is placed on the Unfavorable Calendar.

\_\_\_\_ On motion of Rep. \_\_\_\_\_, (the rules are suspended) (Rule \_\_\_\_ is suspended) and the bill/resolution is placed on today's calendar. (for immediate consideration.)

\_\_\_\_ On motion of Rep. \_\_\_\_\_, Committee Amendment No.(s) \_\_\_\_\_ is/are adopted (by EV \_\_\_\_\_).

\_\_\_\_ On motion of Rep. \_\_\_\_\_, Committee Amendment No.(s) \_\_\_\_\_ is/are adopted (by EV \_\_\_\_\_).

\_\_\_\_ Rep. \_\_\_\_\_ offers Amendment No. \_\_\_\_ which (is adopted.) (fails of adoption.) (by EV \_\_\_\_\_.) ( ) This amendment changes the title.

\_\_\_\_ The bill/resolution (, as amended,) passes its second reading (by following vote, \_\_\_\_\_ RC) (, by EV \_\_\_\_\_,) and (remains on the Calendar,) (and there being no objection is read a third time).

\_\_\_\_ The bill/resolution (, as amended,) passes its third reading (by the following vote, \_\_\_\_\_ RC) (, by EV \_\_\_\_\_,) and is ordered  
\_\_\_\_ sent to the Senate.  
\_\_\_\_ without engrossment. \_\_\_\_ by Special message.  
\_\_\_\_ sent to the Senate for concurrence in  
\_\_\_\_ House amendment (s).  
\_\_\_\_ House committee substitute.  
\_\_\_\_ enrolled.

\_\_\_\_ On motion of Rep. \_\_\_\_\_, the House concurs in the (material) Senate  
\_\_\_\_ (by the following vote, \_\_\_\_\_ RC) (, by EV \_\_\_\_\_,) and  
the bill is ordered enrolled.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. \_\_\_\_\_

H. B. No. \_\_\_\_\_

DATE \_\_\_\_\_

S. B. No. 41

Amendment No. \_\_\_\_\_

(to be filled in by  
Principal Clerk)

COMMITTEE SUBSTITUTE \_\_\_\_\_

(Rep.) BRIDGEMENT  
Sen. )

1 moves to amend the bill on page 1, line 10

2 ( ) WHICH CHANGES THE TITLE

3 by INSERTING BETWEEN THE WORDS "CENTRAL" AND "HEATING"

4 THE WORDS "OR ELECTRIC"

5 \_\_\_\_\_

6 \_\_\_\_\_

7 \_\_\_\_\_

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11 \_\_\_\_\_

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13 \_\_\_\_\_

14 \_\_\_\_\_

15 \_\_\_\_\_

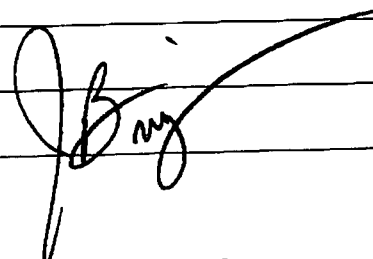
16 \_\_\_\_\_

17 \_\_\_\_\_

18 \_\_\_\_\_

19 \_\_\_\_\_

SIGNED



ADOPTED

X

FAILED

TABLED

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

1

SENATE BILL 41

Short Title: Require Rental Property Heat.

(Public)

Sponsors: Senators Reeves; and Miller.

Referred to: Judiciary II.

February 4, 1999

- 1 A BILL TO BE ENTITLED  
2 AN ACT TO REQUIRE THAT EVERY DWELLING UNIT LEASED AS RENTAL  
3 PROPERTY IN CERTAIN CITIES BE FURNISHED WITH A SOURCE OF  
4 HEAT.  
5 The General Assembly of North Carolina enacts:  
6 Section 1. Part 6 of Article 19 of Chapter 160A of the General Statutes is  
7 amended by adding a new section to read:  
8 "**§ 160A-443A. Heat source required.**  
9 (a) A city shall, by ordinance, require that by January 1, 2000, every dwelling unit  
10 leased as rental property within the city shall have, at a minimum, a central heating  
11 system or sufficient chimneys, flues, or gas vents, with heating appliances connected,  
12 so as to heat at least one habitable room, excluding the kitchen, to a minimum  
13 temperature of 68 degrees Fahrenheit measured three feet above the floor with an  
14 outside temperature of 20 degrees Fahrenheit.  
15 (b) All heating systems and heating appliances shall be installed and maintained  
16 in a good and safe working condition by the owner of the dwelling unit.  
17 (c) Portable kerosene heaters are not acceptable as a permanent source of heat as  
18 required by subsection (a) of this section but may be used as a supplementary source  
19 in single family dwellings and duplex units. An owner who has complied with  
20 subsection (a) shall not be held in violation of this section where an occupant of a  
21 dwelling unit uses a kerosene heater as a primary source of heat.  
22 (d) This section applies only to cities with a population of 200,000 or over,  
23 according to the most recent decennial federal census.  
24 (e) Nothing in this section shall be construed as:



- 1           (1)   Diminishing the rights of or remedies available to any tenant under  
2               a lease agreement, statute, or at common law; or  
3           (2)   Prohibiting a city from adopting an ordinance with more stringent  
4               heating requirements than provided for by this section."  
5       Section 2. This act is effective when it becomes law.



# HOUSE BILL 41: Require Rental Property Heat

## BILL ANALYSIS

**Committee:** House Small Business  
**Date:** March 10, 1999  
**Version:** 1st Edition  
S41-SMSD-001

**Introduced by:** Sen. Reeves  
**Summary by:** Rick Zechini, Walker Reagan  
Committee Counsel

**SUMMARY:** *Senate Bill 41 requires a city with a population of 200,000 or more to require by ordinance that every dwelling unit leased as rental property within the city have a heating source.*

**CURRENT LAW:** There is no current statutory law requiring rental property owners to provide central heat or heating appliances.

**BILL ANALYSIS:** Senate Bill 41 requires any city with a population of 200,000 or more to adopt an ordinance requiring by January 1, 2000, every dwelling unit leased as rental property within the city to have a central heating system or heating appliances sufficient to heat at least one habitable room, excluding the kitchen, to a minimum of 68 degrees Fahrenheit measured three feet above the floor with an outside temperature of 20 degrees Fahrenheit. The use of portable kerosene heaters is not an acceptable means of complying with the heating requirement, but this type of heater may be used as a supplementary source of heat. The bill allows cities to adopt more stringent heating requirements.

**BACKGROUND:** Currently Raleigh and Charlotte are the only cities in North Carolina with populations in excess of 200,000. Charlotte has an ordinance requiring all dwellings and dwelling units to have a central heating system or heating appliances sufficient to heat all habitable rooms to a minimum of 68 degrees Fahrenheit measured three feet above the floor with an outside temperature of 20 degrees Fahrenheit. These requirements exceed the requirements contained in the bill. Raleigh has an ordinance requiring all dwelling units to have heating facilities capable of safely and adequately heating all habitable rooms. A new Raleigh ordinance will go into effect on September 2, 2000, requiring that during the months of October through May dwelling units have a heating appliance with a minimum capacity of 12,000 BTU output so as to heat at least one habitable room, excluding the kitchen, to a minimum temperature of 65 degrees Fahrenheit, measured three feet above the floor with an outside temperature of 25 degrees Fahrenheit.

**EFFECTIVE DATE:** The bill will become effective when it becomes law.

## VISITOR REGISTRATION SHEET

## SMALL BUSINESS

3 - 10', 1999

Name of Committee

Date \_\_\_\_\_

**VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK**

[illegible]

**NORTH CAROLINA HOUSE OF REPRESENTATIVES  
COMMITTEE MEETING NOTICE**

You are hereby notified that the Committee on **Small Business** will meet as follows:

**DAY & DATE:**      **April 14, 1999**

**TIME:**              **12:00 noon**

**LOCATION:**         **421 LOB**

The following bills will be considered (Bill # & Short Title):

Respectfully,

Representative Daniel T. Blue, Jr.  
Chairman

I hereby certify this notice was filed by the committee assistant at the following offices at  
**2:45 pm on April 9, 1999.**

\_\_\_\_ Principal Clerk  
\_\_\_\_ Reading Clerk - House Chamber

Lin Threatt (Committee Assistant)

# **AGENDA**

## **HOUSE COMMITTEE ON SMALL BUSINESS**

**April 14, 1999  
Room 421 LOB  
12:00 noon**

**Opening Remarks**

**Presentation by Staff Attorneys**

**Walker Reagan**

**Rick Zechini**

**Discussion**

**Closing Remarks**

**Adjournment**

# HOUSE SMALL BUSINESS COMMITTEE

Minutes  
April 14, 1999

The House Committee on Small Business met on April 14, 1999 in Room 421, Legislative Office Building. The following members were present: Rep. Dan Blue, Chair, Representatives John Bridgeman, Stanley Fox, William Hiatt, Amelia Morris, Edd Nye, John Rayfield, and Trudi Walend.

Rep. Blue called the meeting to order at 12:05 pm and welcomed the members and pages. The agenda for the day was to hear a presentation by the committee staff attorneys, Rick Zechini and Walker Reagan, on what kinds of services the State provides to small businesses. At the conclusion of the presentation, Rep. Blue suggested that the committee should look at ways to help new small businesses get off on a better start, and to identify ways of making the process more user friendly. Rep. Morris stated that she would like the committee to study regulatory requirements for small businesses, and Rep. Rayfield said that he was interested in knowing how involved the State was in venture capital. Rep. Walend stated that the committee should be aware that in the future small businesses will consist of even fewer employees than current statistics show.

Rep. Blue thanked the staff attorneys for their presentation, requested that they contact the Secretary of Commerce to come and talk with the committee about the State's policies and involvement with small businesses.

The committee was adjourned at 12:45pm.

  
Representative Daniel T. Blue, Jr., Chair  
Lin Threatt, Committee Assistant

## OVERVIEW OF SMALL BUSINESS ISSUES

House Small Business Committee  
April 14, 1999

O. Walker Reagan, Committee Co-Counsel

- **WHAT IS THE STATE DOING TO ASSIST SMALL BUSINESSES?**
  - Define small business
  - NC small business statistics
- **TYPES OF STATE SERVICES**
  - State funding
  - State technical assistance
  - State administration of federal programs
- **HOW ARE STATE SERVICES PROVIDED?**
  - State agencies
  - Tax incentives
  - Funding to private non-profits
- **STATE PROGRAMS**
  - **Department of Commerce**  
General services available to all businesses are also available to most small businesses.
  - **Small Business Council - Lieutenant Governor , Chair**  
Primarily established to help organize or create an insurance group of small business when health and casualty insurance was difficult for small business to obtain or afford.
  - **University System**  
Small Business Technology Development Center -  
Best single source of information for new small businesses.  
Provides business counseling services including business feasibility analysis, preparation of business plans, and finding sources of capital.
  - **Community Colleges**  
Job training programs.

- **Tax Incentives**

As available to all businesses - not specifically targeted to small businesses:

- Job tax credits
- Worker training credits
- Investment tax credits

- **STATE FUNDING**

Normally through non-profits either by appropriation or bond funding

- NC Biotechnology Center
- NC Technological Development Center
  - Innovation Research fund
  - Rural loan program
  - NC Business Incubators
- NC Rural Economic Development Center
  - Capital Access program
  - Child Day Care Loan Guarantees
  - Microenterprise Loan program

- **STATE ADMINISTRATION OF FEDERAL PROGRAMS**

- Community Development Block Grants (CDBG) - project and area specific
- Community Development Corporations (CDC's)
- NC Department of Agriculture - various farm related loan programs

- **FEDERAL SMALL BUSINESS PROGRAMS**

- Small Business Administration (SBA)
  - SBA loans - loan guarantees
  - International Trade loans
  - Export Working Capital
  - Prequalified Women's Loan Program
  - Microloans
  - Small Business Investment Company Program
  - Small Business Innovation Research

- **WHAT DOES THIS TELL US?**

The State is involved in a lot of different ways with small businesses. Not sure how involved, how many people affected, or how much money is committed.

It is hard for the public to identify a single source for information or help on what is available to assist small businesses. The Small Business Technology



Development Center appears to be the best single source at this time - not sure how well known it is or how many people it helps.

The State might be able to do a better job of creating a single source of information that is highly visible.

- **How Could the Committee Proceed**

Hear from the following to identify the issues and unmet needs:

- Secretary of Commerce - overall State policy for Small Businesses
- Small Business Technology Development Center - what services are out there and what is needed
- Rural Economic Development Center - what is out there, what is needed
- Identify Small Business organizations

## Capital Opportunities for Small Businesses, 12th Edition

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### STATE PROGRAMS

| PROGRAM NAME   | APPLICANT TYPE   | DESCRIPTION  | DISBURSEMENTS   | RESTRICTIONS  |
|--|--|--|---|---|
| <b>NC Dept. of Commerce - Commerce Finance Center (919) 733-5297</b> |  |  |   |   |
| <b>Economic Development Program - CDBG</b>                           | Program applicant must be local government unit in conjunction with bank and small business. | Funds can be used for construction, renovation, land acquisition or the purchase of new equipment. Also direct loans may be made to the project business.          | Awards are limited to a maximum of \$1 million per unit of local government per year.   | Projects must involve specific activities that create permanent full-time jobs.   |
| <b>Business Energy Improvement Program</b>                           | Industrial or commercial business located or moving to NC.                                   | Loans are for energy-related capital improvements such as energy saving motors, boiler improvements and low energy lighting.                                       | \$100,000 to \$500,000 per loan for up to 7 years at rate not higher than 5%. Funds are provided from a pool of \$2.5 million.  | Requires letter of credit from a participating bank.  |
| <b>Industrial Revenue Bond</b>                                       | Manufacturing companies for land, buildings or new equipment.                                | Long-term, low interest financing. Low rates available on tax exempt issues because the bonds are not subject to federal income tax. Usually 8 to 10 yr. maturity. | Maximum tax exempt bond amount is \$10 million per jurisdiction over a six year period. Taxable issues are not subject to this limit. The 1998 allowance was \$343 million. | Available only to firms paying 10% over the average county wage. Federal and state regulations govern issuance. New firms must put up 25% of the bond amount. |
| <b>Job Creation Tax Credit</b>                                       | Companies in designated industries with over 5 employees.                                    | Tax credit for businesses creating jobs in eligible industries.  | \$500 to \$12,500 per job created. Jobs created in development zones receive an additional \$4,000 credit per job.  | Business must meet a required wage standard. A max. of 50% of total tax liability can be offset over a four year period.                                      |
| <b>Machinery and Equipment Tax Credit</b>                            | Companies in designated industries with over 5 employees.                                    | Tax credit for investment in machinery and equipment.  | 7% of the excess value over an applicable threshold amount.   | Generally, M&E eligible if capitalized; for large investments leased equipment may be eligible.   |
| <b>Credit for Worker Training</b>                                    | Companies in designated industries with over 5 employees.                                    | Tax credit for certain worker training.  | Credit equal to wages paid to eligible employees during the training.   | Full-time employee who occupies a job eligible for job creation credit or who is being trained on equipment eligible for M&E credit.                          |
| <b>Credit for Research and Development</b>                           | Firms which qualify for federal Research and experimentation Tax credit                      | Tax credit for investment in research and development.   | 5% of state's apportioned share of the taxpayer's expenditures for R&D; 25% credit for taxpayers claiming alternative incremental credit.                                   | Firms must qualify for federal Research and experimentation Tax credit.   |
| <b>Industrial Development Fund</b>                                   | Local government applicants  | Funds available for the creation of jobs in certain industries.  | \$5,000 per job, up to a maximum of \$500,000.  | Must be used for eligible projects in a county designated as economically distressed.   |

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| <b>Business Property Tax Credit</b>   | All business taxpayers are eligible.  | Tax credit for investment in tangible business property capitalized under the tax code.   | 4.5% credit up to a maximum of \$4,500 per year.   | Firms may take the credit in 5 equal installments beginning in the taxable year in which the property is placed in service.          |
| <b>NC Dept. of Commerce - Division of Community Assistance (919) 733-2850</b> |   |   |  |  |
| <b>Community Empowerment</b>  | Unit of local government in partnership with private companies.                       | Assistance to support economic revitalization programs.   | Up to \$750,000 per award. Total of \$1.9 million available in 1998.                                       | Small businesses bid on projects funded at the local government level.   |
| <b>NC Dept. of Commerce - International Trade Division (919) 733-7193</b>     |   |   |  |  |
| <b>Foreign Sales Corporation Program</b>                                      | Exporters   | Exporters can increase their profit margins by excluding a portion of their foreign sales income from federal and state taxable income. Formation cost starts at \$2,000. | Generally 15% of export profits are tax exempt. Maximum tax savings can be as high as 30%.                 | FSC becomes cost effective when export sales reach \$500,000.  |
| <b>NC Dept. of Commerce - Business and Industry Division (919) 733-4151</b>   |   |   |  |  |
| <b>Industrial Recruitment Competitive Fund</b>                                | Businesses locating or expanding in NC deemed to be vital to a healthy state economy. | Money can be used for equipment, structural repairs, renovating buildings, and construction of or improvements to new or existing water, sewer, gas or electric.          | Average award is about \$250,000. \$10.5 million of \$12 million fund committed between Dec. 93 - Jun. 95. | No funds yet appropriated by General Assembly for fiscal year 1998-99.   |
| <b>North Carolina Department of Agriculture (919) 733-2113</b>                |   |   |  |  |
| <b>North Carolina Rural Rehabilitation Corp.</b>                              | Rural families  | Low interest loans offered on a participating basis with the Rural Development and the NC Agricultural Finance Authority.   | N/A  | Assets are currently used only for farm purchase and improvement loans and loans to small food processing operations in rural areas. |
| <b>Secretary of State - Securities Division (919) 733-3924</b>                |   |   |  |  |
| <b>NC Investment Tax Credit</b>   | Corporations, individuals or pass-through entities making qualified investments.      | Provides a credit against state taxes for corporations and individuals who purchase securities of a qualified business venture.   | \$40,000 per year available for individuals. \$750,000 per year available for a pass-through entity.       | Must invest in a qualified business venture with less than \$5 million in annual sales.  |
| <b>North Carolina State Ports Authority (800) 334-0682</b>                    |   |   |  |  |
| <b>Port Wharfage Credit</b>   | Exporters who use ports at Morehead City or Wilmington                                | Tax credit can be earned on cargo wharfage and handling fees exceeding the average for the last three years.  | Maximum cumulative credit may not exceed \$ 1 million.   | Credit cannot exceed 50% of the company's total state tax liability per year. Taxpayer must provide required documentation.          |

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## SPECIALIZED PRIVATE SOURCES

| PROGRAM NAME   | APPLICANT TYPE  | DESCRIPTION   | DISBURSEMENTS   | RESTRICTIONS  |
|--|---|---|---|---|
| <b>North Carolina Biotechnology Center (919) 541-9366</b>                      |   |   |   |   |
| <b>Small Business Research Award Program</b>                                   | Any NC Biotechnology company  | Low interest loans of seed capital provided to fund early R&D activities.   | Maximum \$100,000 per award.  | Funds must be used for research leading to the development or refinement of a product or process with commercial potential. |
| <b>SBIR Bridge Fund</b>  | Companies involved in the Fed Gov't SBIR or STTR program.                           | Provides assistance to help companies bridge gap between Phase I and Phase II funding.  | Up to \$75,000 for beginning work on Phase II objectives.   | Funds are for direct costs associated with activities that refine Phase I research and initiate work on Phase II.           |
| <b>Collaborative Funding Assistance Program</b>                                | Biotech or biosciences firms.   | Designed to promote cooperation between universities and private companies in discovering commercially applicable technology. | Max. \$30,000 per award. 1997 awards totaled about \$320,000.   | Company must contribute at least \$15,000 and university is expected to contribute \$15,000 of in-kind services.            |
| <b>Business Development Award Program</b>                                      | Any NC Biotechnology company  | Intended to support non-scientific research endeavors that are critical to the commercialization of a company's research.     | Maximum \$10,000 matching loan.   | Funds to be used for commercialization of company's research.   |
| <b>North Carolina Technological Development Authority, Inc. (919) 990-8558</b> |   |   |   |   |
| <b>Innovation Research Fund</b>  | Early stage, high growth businesses seeking equity investors.                       | Investment fund established to invest in companies with high-growth, job-creation potential.                                  | \$50,000 to \$250,000 in equity or convertible debt investments.                                      | Must be early stage, high growth NC-Based Companies   |
| <b>Rural Loan Program</b>  | Emerging companies in rural areas and organizations developing business incubators. | TDA serves as an intermediary lender of funds provided through the USDA.  | Loans may be made for lesser of 75% of project cost or \$150,000.                                     | Must be unable to get funds elsewhere. Projects must create/save jobs. Firm must be located in town with pop. under 25,000. |
| <b>NC Business Incubators</b>  | Small business interested in minimizing overhead through shared facilities.         | TDA assists the funding of a statewide small business incubator infrastructure  | Since 1983, TDA has approved funding for the start-up of 26 business incubators throughout the state. | Limited space is available. Rural areas are targeted for future incubators.   |
| <b>First Flight Venture Center</b>   | Early stage technology-based small companies.                                       | Incubator providing space and services in RTP.  | N/A   | Technology-based small companies  |
| <b>North Carolina Biotechnology Center (919) 485-8844</b>                      |   |   |   |   |
| <b>Bioscience Investment Fund</b>  | Young, high-growth companies  | Early-stage venture capital fund focused entirely on life-science oriented companies.   | \$250,000 to \$2 million  | Bioscience related entrepreneurial companies  |
| <b>Centennial Campus at N.C. State University (919) 485-8844</b>               |   |   |   |   |

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|--|---|--|--|---|
| <b>Centennial Venture Fund</b>                             | Companies commercializing technology developed at NC State or that are affiliated with NC State             | Early-stage venture capital fund focused entirely on intellectual property and scientific discoveries.   | \$250,000 to \$500,000   | Company must have NC State affiliation or commercialize research done by NC State   |
| <b>Piedmont Triad Research Park (336) 716-8672</b>         |   |  |  |   |
| <b>Forsyth Angel Investors</b>                             | Technology businesses   | Early-stage venture capital fund focused technology business development.  | Not available  | Not available   |
| <b>NC Rural Economic Development Center (919) 821-1154</b> |   |  |  |   |
| <b>North Carolina Capital Access Program</b>               | Any business may apply.   | Loans are made by 25 participating banks protected by a capital reserve which allows for more aggressive loan decisions.   | Average loan size is about \$50,000.   | Available to businesses missing an element, such as proper collateral, needed to qualifying for a conventional business loan. |
| <b>Child Day Care Loan Guarantee Fund</b>                  | Start-up or expansion of child care facilities.   | Loans can be used to finance land, building, or equipment needs.   | Guarantees 80% of loan up to total of \$75,000.  | Limited to 50 economically distressed counties.   |
| <b>Microenterprise Loan Program (MLP)</b>                  | Small businesses owned by rural, low-income minority or female persons in one of 85 participating counties. | Group lending involves loans to groups of 4 to 10 persons who function as a unit. Individual lending is reserved for more established firms with larger capital needs. | Up to \$8,000 for group loans after smaller loans are repaid. Up to \$25,000 for individual loans to more established firms. | In Group lending, members are not able to receive additional financing until all individual loans are up to date on payments. |
| <b>ENTREPRENEURIAL COUNCILS (919) 544-4642</b>             |   |  |  |   |
| <b>Council for Entrepreneurial Development</b>             | Any small business.   | CED sponsors annual venture capital fair matching entrepreneurs with investors.  | None   | Councils don't provide capital, but provide the opportunity to network and seek out capital opportunities.                    |

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### PRIVATE, NON-PROFIT, AND LOCAL PROGRAMS

| PROGRAM NAME   | APPLICANT TYPE   | DESCRIPTION   | DISBURSEMENTS  | RESTRICTIONS  |
|--|--|---|--|---|
| <b>Center for Community Self-Help (919) 956-4400</b>                 |  |   |  |   |
| <b>Self-Help Ventures Fund, Self-Help Credit Union</b>               | Varies depending on program.   | Self-Help is involved in SBA 504 loans, SBA 7(a) loans, SBA Microloans, RDA's IRP loans, and administers other local programs.                                      | Offers a variety of loan products from \$500 to \$1.5 million. Made \$19 million in commercial loans in 1997.                  | Varies  |
| <b>Good Work</b>   | Triangle area startups or business expansions.                               | Group lending at 13% rate. Program involves groups of individual forming Loan Circles.  | Initial loans for up to \$1,000. After repayment, loans available up to \$10,000. Since 1992, has made over \$90,000 in loans. | No group member can get additional loans unless all other individuals are current on payments.                    |
| <b>Local Government Programs</b>                                     |  |   |  |   |
| <b>Charlotte City Within a City Equity Loan Program</b>              | Any business type within program boundaries owned by low-wealth individuals. | Loans to businesses who hire people from the city within a city boundaries in Charlotte. Banks provide 80% of the financing and the city of Charlotte provides 20%. | Loan size is determined by individual bank. Since program began, the city has loaned \$2.1M and the banks \$12.1M.             | Must create one new job for each \$10,000 of city funds loaned.   |
| <b>Greensboro Venture Capital Fund</b>                               | Minority or woman owned business located in Greensboro/ Guilford County.     | The fund provides debt financing to assist businesses in obtaining conventional commercial loans.   | Loan range from \$5,000 to \$50,000 at interests rates of prime plus 3 to 6% with max. term of 5 yrs.                          | Business must be for-profit with net worth less than \$6 million.   |
| <b>Wake County Economic Development Loan Fund</b>                    | Wake County except for Raleigh and Holly Springs.                            | Loan funds can be used for real estate equipment, inventory, supplies and working capital.  | N/A  | Loans to start-up and small business applicants who earn less than 80% of the median county income.               |
| <b>Raleigh Small Business Success Program</b>                        | Small businesses located in the southeast part of the city.                  | Major banks and the city of Raleigh created this program to stimulate business development and the creation of jobs.  | \$10,000 to \$125,000.   | Loan can be used for limited purposes. Term is limited to 5 yrs. for general loans, 7 yrs. for real estate loans. |
| <b>Micro Enterprise Loan Program of Winston-Salem/Forsyth County</b> | Small businesses in Forsyth County.  | Offers small loans of \$500 to \$5,000 covering a wide variety of needs.  | N/A  | N/A   |
| <b>Winston-Salem Small Business Loan Program</b>                     | Winston-Salem target area and Hewitt Business Center.                        | Loans to businesses that create jobs benefiting low to moderate income individuals.   | \$1,500 to \$50,000 per loan. Max. term is 10 yrs. One job must be created for every \$25,000 borrowed.                        | Business net worth cannot exceed \$6M with net profits less than \$2M during previous 2 years.                    |
| <b>Other Programs</b>  |  |   |  |   |
| <b>Business Consortium Fund</b>                                      | NC certified minority businesses.  | Loans at prime rate to minority businesses to help finance expenses or purchases related to a specific transaction.   | Up to \$500,000  | Company must have a confirmed contract with a member of National Minority Supplier Development Council.           |

|   |   |  |  |  |
|---|---|--|--|--|
| <b>Mountain Commercial Lending Consortium</b>               | Start-ups and expansion companies in western NC.      | Loan pool created by nine participating banks. Loans are at 3% over prime and for a max. term of 5 yrs.      | Loans made in 3 range levels from under \$25,000 to a maximum of \$150,000.      | Businesses must be in one of 20 designated counties in western North Carolina.                                     |
| <b>Appalachian Regional Commission</b>                      | Small businesses in 7 participating western counties. | Allocates capital for two revolving loan funds.  | Offers loans up to \$200,000 or \$15,000 per job created.                        | One fund is structured based on EDA guidelines, other fund on SBA 504 guidelines.                                  |
|   | Community Development Credit Unions                   | Member-controlled financial cooperatives financing community-based entrepreneurs.                            | In 1997, CDCUs made over \$17 million in new loans to low-weath citizens in NC.  | 13 CDCUs serve over 35 counties in the state.  |
| <b>NC Association of Community Development Corporations</b> | NC Association of Community Development Corporations  | Loans at prime rate minus 1% provide working capital for pre-development financing. Terms are up to 2 years. | Fund offers access to approximately \$600,000 in assets for project development. | Funds are not lent directly to businesses, but are channeled to firms through individual community develop. corps. |

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## FEDERAL GOVERNMENT SOURCES

| PROGRAM NAME  | APPLICANT TYPE   | DESCRIPTION  | DISBURSEMENT RANGE   | RESTRICTIONS   |
|---|--|--|--|--|
| <b>Small Business Administration (704) 344-6563</b> |  |  |  |  |
| <b>Guaranteed 7(a) Loan</b>                         | Most start-ups and small businesses eligible. Special rules apply for some industries.                               | SBA guarantees up to 80% for loans under \$100,000 or 75% for loans over \$100,000 made by private lenders. Loans range from 7 to 25 yrs.                                  | Maximum guarantee is \$750,000. Cost includes fixed or variable rate of loan plus guarantee fee and service fee.                                 | Only available if funds from other sources are not available. New business owner's equity must be at least 20%.                  |
| <b>SBA LowDoc</b>                                   | Most start-ups and small businesses are eligible.  | One page application. SBA guarantees up to 80% of loans made by private lenders. Max. guarantee is \$150,000.  | Guarantee at NY prime + 2 1/4% for less than 7-yr loan plus applicable fees. 2809 loans for over \$16 million to NC businesses in 1997           | Borrower must pledge available assets. Personal guaranties of principals are required.   |
| <b>SBA Express</b>                                  | Small business desiring quick turnaround and requiring a relatively low guaranty.                                    | Participating SBA lenders use their own loan process to make guarantees without SBA prior review.  | Loan guarantee is for 50% on maximum total loan amount of \$100,000.   | Availability varies according to lender participation.   |
| <b>CAPLines Revolving Line of Credit</b>            | Existing small business with cyclical or short-term need. Same size requirements as 7(a).                            | Revolving line of credit for short-term or fluctuating working capital needs. Accounts receivable or inventory used as collateral.   | Guarantees 75% of total loan amount. Max. guarantee is \$750,000 for all CAPLines except the Small Asset Based Line which has max. of \$200,000. | All funds must be used for short-term or cyclical operating needs. Max. 5 years for initial maturity.                            |
| <b>International Trade Loan Program</b>             | Small businesses engaged in int'l trade or adversely impacted by competition from imports.                           | Combined effort of SBA and Ex-Im Bank to support small businesses expanding into export markets. Can be administered under either 504 or 7(a) programs.                    | Maximum amount guaranteed is \$1.25 million in combined working capital and facilities-and-equipment loans.                                      | Funds must be used for export related activities. May not be used to refinance existing debt.                                    |
| <b>Export Working Capital Program</b>               | Exporters who need short-term working capital  | Funds are loaned to small businesses needing transaction-specific export financing.  | Maximum guarantee is 90% of loan or \$750,000, whichever is less.  | Funds must be used for export related activities. Line of credit generally available for 12 months. Personal guarantee required. |
| <b>Prequalified Women's Loan Pilot Program</b>      | Any NC business that is at least 51% female owned with less than \$5 mm in annual sales and less than 100 employees. | SBA issues a prequalification letter of guarantee to the owner of the business to be given to the bank. Non profit intermediary helps prepare application and secure loan. | Maximum guarantee is 75% of loan or \$250,000, whichever is less.  | Business must have less than \$5 million in annual sales and less than 100 employees.  |
| <b>DELTA</b>  | Defense oriented businesses looking to diversify operations.   | Loans to enable defense-dependent firms to diversify into commercial markets.  | Total loan amount may be for \$1.25 million. May be administered under 504 loan program or 7(a) loan guarantee program.                          | Business must have derived at least 25% of prior-year's revenues from defense contracts.   |
| <b>Qualified Employee</b>                           | Qualified Employee Stock Ownership   | ESOP may use funds to purchase employer securities or a  | Varies   | Employee trust must qualify as ESOP under IRS regulations or   |



| Trust Loans   | Plans (ESOP)  | controlling interest in employer.  |  | under Dept. of Labor (for ERISA plans)   |
|---|---|--|--|--|
| <b>504 Program</b>                                      | Businesses with less than \$6 mm net worth and average income less than \$2 mm over last two yrs.       | Long-term fixed asset loans up to 20 yrs. made by combo financing of SBA backed CDC's and banks. Rates based on current Treasury issues plus guarantee fee of about 3% | CDC loan portion cannot exceed 40% of project. Maximum SBA debenture supporting the loan can be up to \$1,000,000. \$38.2 million in NC loans in 1997. | Must be used for fixed assets. Must create one job for every \$35,000 of CDC funds. Start-ups must contribute 30% equity to total start-up.    |
| <b>Microloan Program</b>                                | Most start-ups and small businesses are eligible.   | SBA provides qualified intermediaries with funds that are then used for short-term, fixed interest rate microloans to small businesses.                                | Up to \$25,000 loans. Interest rates are pegged to 4% over prime plus applicable fees.   | Loans for max. of 6 yrs. are made through only two intermediaries within the state.  |
| <b>Small Business Investment Company Program (SBIC)</b> | Any start-up or small business with high growth potential.  | Eight Small Business Investment Companies (SBICs), licensed by the SBA, provide equity capital and debt/equity combinations to high growth companies in NC.            | Varies   | Individual SBICs set own policies. Cost of capital depends on whether debt financing, equity financing, or convertible debt financing is used. |
| <b>Small Business Innovation Research Program</b>       | Start-up and existing technology-based companies.   | Participating federal agencies solicit for R&D proposals and award funding to qualified businesses.  | Phase 1 \$100,000 grant Phase 2 \$750,000 grant  | Phase 3 - the commercialization phase requires private, non-SBIR funding.  |
| <b>Small Business Technology Transfer Program</b>       | Start-up and existing technology companies participating in cooperative R&D with research institutions. | Participating federal agencies solicit for R&D proposals and award funding to qualified businesses.  | Phase 1 \$100,000 grant Phase 2 \$500,000 grant  | Phase 3 - the commercialization phase requires private, non-SBIR funding.  |

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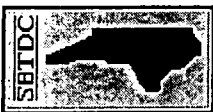
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## OTHER FEDERAL GOVERNMENT PROGRAMS

| PROGRAM NAME  | APPLICANT TYPE  | DESCRIPTION  | DISBURSEMENT RANGE  | RESTRICTIONS   |
|---|---|--|---|--|
| <b>National Institute of Standards and Technology (Dept. of Comm.) 1-800-287-3863</b> |   |  |   |  |
| <b>Advanced Technology Program</b>  | Large and small technology oriented companies.  | R&D grants are made on the basis of either pre-announced technology topics or via an annual general competition.                 | Single company can receive up to \$2 million over three years. \$20 million available annually for the general competition.                                     | Proposals must be submitted on time and projects must be of high technical risk.   |
| <b>Economic Development Administration (Dept. of Commerce) (803) 765-5676</b>         |   |  |   |  |
| <b>Economic Adjustment (Title IX) Revolving Loan Funds (RLFs)</b>                     | Set up in conjunction with non-profit organization that represents area. Funds then loaned to small companies | Provides funds to establish revolving loan funds in distressed areas for fixed assets and working capital loans.                 | EDA funds to establish RLFs range from \$100,000 to \$1.5 million. Individual RLFs set own policy. General EDA guideline is \$5,000 loaned per job created.     | Potential RLFs must be located in areas experiencing very high unemployment, low per capita income, or chronic distress.                     |
| <b>Rural Development (U.S. Dept. of Agriculture) (919) 873-2000</b>                   |   |  |   |  |
| <b>Business/Industrial Loan</b>   | Rural firms in any industry   | RDA guarantees up to 80% on loan less than \$5 million and 70% on loan greater than \$5 million.                                 | maximum \$10 million guarantee.   | Priority given to applicants in towns with less than 25,000 people. 10% equity required for established business, 20% required for start-up. |
| <b>Intermediary Relending Program (IRP)</b>   | Rural firms, any industry.  | RDA makes loans to non-profit organizations who relend to small businesses or start-ups in rural areas involved in any industry. | 75% of project costs not to exceed \$150,000 per borrower. Term and interest rate negotiated by borrower and intermediary.                                      | Must be unable to get funds elsewhere. Projects must create/save jobs. Firm must be located in town with pop. under 25,000.                  |
| <b>Rural Business Enterprise Grants</b>   | Public bodies, non-profit corporatins, & Indian Tribal groups   | Funds to finance and facilitate small and emerging private businesses in rural areas.  | Varies.   | Business with less than 50 new employees and less than \$1M in revenues are eligible for assistance.   |
| <b>Farm Service Agency (U.S. Dept. of Agriculture) (919) 875-4850</b>                 |   |  |   |  |
| <b>Farm Ownership Loans</b>   | Operators of family-sized farms.  | Direct loans and loan guarantees made to buy, improve, or enlarge farms.   | Maximum outstanding principal for direct loans is \$200,000 and for guaranteed loans is \$300,000. Loan is secured by real estate involved.                     | Must be unable to obtain funds elsewhere. Borrowers receiving direct loans are expected to refinance using commercial sources when feasible. |
| <b>Farm Operating Loans</b>   | Operators of family-sized farms.  | Operating loan funds may be used to pay for items such as livestock, equipment, seed, crop insurance, hired labor, etc.          | Maximum outstanding principal for direct loans is \$200,000 and for guaranteed loans is \$400,000. Loans are for 1 to 7 years or when financed product is sold. | Must have satisfactory history of debt repayment. May be used to refinance only certain debt. Collateral is in the form of a first lien.     |
| <b>U.S. Department of Energy (202) 586-1479</b>                                       |   |  |   |  |

|  |   |  |  |   |
|--|---|--|--|---|
| <b>Inventions and Innovations Program</b>                | Inventors and small businesses involved with the development of energy technology.            | Grant programs for energy-related inventions with commercial potential.  | Awards range from \$40,000 to \$100,000, depending on invention's stage of development.  | Formal solicitation held annually, usually in May.  |
| <b>US Export-Import Bank (800) 565-EXIM</b>              |   |  |  |   |
| <b>Export Credit Insurance</b>                           | US exporters  | Protects against political and commercial risks of foreign buyer defaulting on payment                                       | short and medium-term policies   | Credit-worthy buyer and seller  |
| <b>Working Capital Guarantee Program</b>                 | Credit-worthy small and mid-sized exporters in US   | Guarantee for lenders making up to one year working capital line of credit or single loan transaction available to exporters | Guarantee of up to 90% of principal and interest. Rate negotiated by lender and borrower. Collateral in the form of export inventory.            | Firms in business one year with positive net worth.   |
| <b>Financial Guarantee Program</b>                       | Any qualified foreign buyer of US goods and services.   | Guarantee of repayment of fixed or floating interest rate export loans to foreign buyers of US exports.                      | Guarantee of 100% of loan up to a maximum of 85% of the contract value.  | Buyer must make 15% cash payment. Guarantee may be for any amount.  |
| <b>Direct Loans to Buyers</b>                            | Qualified foreign buyer of US goods and services where financed portion exceeds \$10 million. | Fixed interest rate loans for two or more years to foreign buyers of US equipment and services.                              | Up to 85% of contract price.   | Buyer must make 15% cash payment. US exporter must face officially subsidized foreign competition.                                    |
| <b>Telecommunications Development Fund (919)715-7272</b> |   |  |  |   |
| <b>Telecommunications Development Fund</b>               | Small and emerging communications businesses  | Equity investments in businesses that offer exceptional products and services.   | Investments range from \$250,000 to \$1,000,000.   | Comprehensive business plan and application required.   |
| <b>US Bureau of Indian Affairs (703) 235-1303</b>        |   |  |  |   |
| <b>Indian Economic Development Program</b>               | Indian owned business benefiting economy of a federally recognized Indian Reservation.        | Loan guarantees to assist Indians and Indian tribes in starting and expanding their own businesses.                          | Guarantees for up to 90% of loan up to max. guarantee of \$500,000 per individual or \$2.5 million per tribe. Loan term may not exceed 30 years. | Funds must be used by a for-profit business with at least 51% Indian ownership that will benefit a federally recognized Indian tribe. |

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## North Carolina Small Business Statistics

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- 98% of North Carolina's businesses employ fewer than 100 people
- 52% of North Carolinians are employed by these small businesses
- These employees produce more than half of our gross state product
- These small businesses are creating most of North Carolina's new jobs

## Small Business and Technology Development Center

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Organized as an inter-institutional program of The University of North Carolina, the Small Business and Technology Development Center (SBTDC) is the primary organization through which the state of North Carolina provides counseling and technical assistance to the business community. The SBTDC's mission is to support the growth and development of North Carolina's economy by encouraging entrepreneurship, assisting in the creation and expansion of small and medium-sized businesses, and facilitating technology development and commercialization. The SBTDC provides management counseling and educational services to help business meet challenges, manage change, and plan for the future.

The SBTDC has two publications that provide assistance to new and expanding small businesses:

- ***The Business Start-Up and Resource Guide*** is a guide for starting a new business that includes information on:
  - Examination of the feasibility of the potential business
  - Legal considerations and requirements (including taxes)
  - developing business plan
  - Arranging financing (not info on specific sources)
  - Resource and information list (includes Internet sites)
- ***Capital Opportunities for Small Businesses*** is a guide that provides information about financing available for small businesses

## VISITOR-REGISTRATION SHEET

## SMALL BUSINESS

Name of Committee

April 14

**, 1999**

Date \_\_\_\_\_

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

**NAME**

**FIRM OR AGENCY AND ADDRESS**[illegible]

**NORTH CAROLINA HOUSE OF REPRESENTATIVES  
COMMITTEE MEETING NOTICE**

You are hereby notified that the Committee on **SMALL BUSINESS** will meet as follows:

**DAY & DATE:**        **Wednesday, April 21, 1999**

**TIME:**                **12:00 noon**

**LOCATION:**          **421 LOB**

The following bills will be considered (Bill # & Short Title):

**HB 1028 Regulate Cash Converters**

**HB 1247 Professional Employer Organizations**

**HB 1277 Pharmacy Choice/Competition**

**HB 1230 Livable State Minimum Wage**

Respectfully,

Representative Dan Blue  
Chairman

I hereby certify this notice was filed by the committee assistant at the following offices at  
**4:15pm on Monday, April 19, 1999.**

\_\_\_\_ Principal Clerk  
\_\_\_\_ Reading Clerk - House Chamber

Lin Threatt (Committee Assistant)

# **AGENDA**

## **HOUSE COMMITTEE ON SMALL BUSINESS**

**April 21, 1999  
Room 421 LOB  
12:00 noon**

### **Opening Remarks**

**Representative Dan Blue, Chair**

### **Bills to be Considered**

**HB 1028 Regulate Cash Converters  
HB 1247 Professional Employer Organizations  
HB 1277 Pharmacy Choice/Competition  
HB 1230 Liveable State Minimum Wage**

### **Closing Remarks**

### **Adjournment**



# HOUSE SMALL BUSINESS COMMITTEE

Minutes  
April 21, 1999

The House Committee on Small Business met on April 21, 1999 in Room 421, Legislative Office Building. The following members were present: Rep. Dan Blue, Chair, Rep. Edith Warren, Vice Chair, Representatives Gordon Allen, John Bridgeman, Nelson Cole, Stanley Fox, William Hiatt, Amelia Morris, Edd Nye, John Rayfield, Mitchell Setzer and Trudi Walend.

Rep. Blue called the meeting to order at 12:03 pm and welcomed the members, pages and visitors. There were several bills before the committee. The first bill to be discussed was HB1028 Regulate Cash Converters, sponsored by Rep. Bill Hurley. The first order of business was the adoption of the proposed committee substitute. The committee voted unanimously. Rep. Blue then invited Rep. Hurley to come and explain the bill. After a brief explanation of the bill several visitors addressed the committee to explain their position on the bill. Immediately following, Rep. Hurley made a motion that the bill be withdrawn from consideration. The committee voted unanimously for the motion.

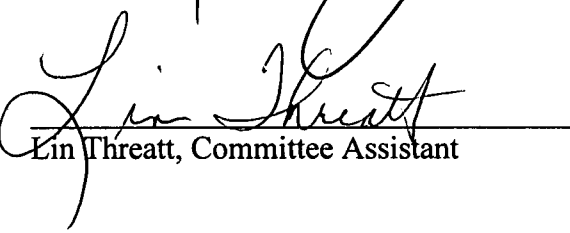
The next items for discussion were HB 1247 Professional Employer Organizations, sponsored by Rep. Lanier Cansler, and HB 1230 Livable State Minimum Wage, sponsored by Rep. Alma Adams. Upon the motion of the Chair these two bills were withdrawn from consideration.

The last bill that was taken up was HB 1277, Pharmacy Choice Competition, sponsored by Rep. Nelson Cole. Rep. Blue asked Rep. Cole to explain the bill. Others were then invited to speak on the bill. After several individuals spoke, Rep. Blue then made a motion to adjourn the meeting with the understanding that they would reconvene after session that evening or on Thursday, April 22, 1999 to vote on the bill.

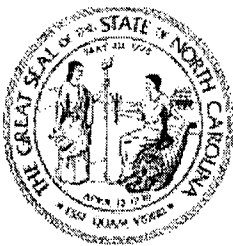
The meeting was adjourned at 1:05pm.



Representative Daniel T. Blue, Jr., Chair



Lin Threatt, Committee Assistant



# HOUSE BILL 1028: Regulate Cash Converters

## **BILL ANALYSIS**

**Committee:** House Small Business  
**Date:** April 21, 1999  
**Version:** First Edition

**Introduced by:** Representative Hurley  
**Summary by:** Rick Zechini  
Committee Counsel

**SUMMARY:** *House Bill 1028 amends the Pawnbrokers Modernization Act to regulate Cash Converters.*

**CURRENT LAW:** The Pawnbrokers Modernization Act (Act) regulates "pawnbrokers", which are defined as any person in the business of lending money on the security of pledged goods. A license is required to operate a pawnshop and enables a person to not only make loans on the pledges of personal property but also to deal in bullion stocks and purchase merchandise for resale from dealers, traders, and wholesale suppliers. Licenses may be obtained from the appropriate city or county agency depending on the location of the pawnshop. The Act specifies the licensure requirements, record keeping requirements, prohibited activity, and penalties for violating the Act. In addition, the Act requires every licensed pawnbroker to file a bond payable to the applicable city or county in the sum of \$5,000.

**BILL ANALYSIS:** House Bill 1028 amends the Act to include cash converters (any person engaged in the business of purchasing merchandise for resale where at least 10% of the merchandise is purchased from persons who are not licensed as wholesale merchants) in the definition of "pawnbroker." The bill makes a series of conforming changes to the Act, including adding a prohibition against purchasing an article known to the pawnbroker to be stolen (Note: a similar provision already exists prohibiting the taking of an article in pawn known by the pawnbroker to be stolen). The bill also adds a section to the Act exempting certain acquisitions from regulation under the Act.

**EFFECTIVE DATE:** The bill becomes effective October 1, 1999, and applies to any transaction made on or after that date. All persons required to be licensed as a result of this bill may apply for licensure on or before October 1, 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H

1

HOUSE BILL 1028

Short Title: Regulate Cash Converters.

(Public)

Sponsors: Representatives Hurley; Warner, Moore, and Wainwright.

Referred to: Small Business.

April 14, 1999

1 A BILL TO BE ENTITLED  
2 AN ACT TO AMEND THE PAWNBROKERS MODERNIZATION ACT TO  
3 REGULATE 'CASH CONVERTERS', WHICH ARE BUSINESSES THAT  
4 PURCHASE OR TRADE PROPERTY FOR RESALE FROM PERSONS WHO  
5 ARE NOT LICENSED WHOLESALE MERCHANTS.  
6 The General Assembly of North Carolina enacts:  
7 Section 1. G.S. 91A-3(2) reads as rewritten:  
8 "(2) 'Pawnbroker' means any person engaged in the business of (i)  
9 lending money on the security of pledged goods ~~and who may also~~  
10 ~~purchase merchandise for resale from dealers and traders or (ii)~~  
11 purchasing merchandise for resale where at least ten percent (10%)  
12 of the merchandise is purchased from persons who are not licensed  
13 wholesale merchants, as defined in G.S. 105-164.3. A person  
14 defined as a pawnbroker in this subdivision may also purchase  
15 merchandise for resale from dealers, traders, and wholesalers."  
16 Section 2. G.S. 91A-3 is amended by adding a new section to read:  
17 "(7) 'Trade' means an exchange or barter of merchandise or goods in  
18 any manner or by any means with or without consideration."  
19 Section 3. G.S. 91A-4 reads as rewritten:  
20 "§ 91A-4. Pawnbroker authority.  
21 A pawnbroker licensee is authorized to: (i) make loans on pledges of tangible  
22 personal property, (ii) deal in bullion stocks, (iii) purchase merchandise for resale  
23 from dealers, traders, and wholesale ~~suppliers and (iv) suppliers, (iv) purchase~~  
24 merchandise for resale from persons who are not dealers, traders, or wholesale

1 suppliers, and (v) use its capital and funds in any lawful manner within the general  
2 scope and purpose of its creation. Notwithstanding the provisions of this section, no  
3 pawnbroker has the authority enumerated in this section unless ~~he~~ the pawnbroker  
4 has fully complied with the laws regulating the particular transactions involved."

5 Section 4. G.S. 91A-7 reads as rewritten:

6 "**§ 91A-7. Record keeping requirements.**

7 (a) Every pawnbroker shall keep consecutively numbered records of each and  
8 every purchase transaction, trade transaction, and pawn transaction, which shall  
9 correspond in all essential particulars to a detachable pawn ticket or copy thereof  
10 attached to the record.

11 (b) The pawnbroker shall, at the time of making the ~~pawn or purchase~~ purchase,  
12 trade, or pawn transaction, enter upon the pawn ticket a record of the following  
13 information which shall be typed or written in ink and in the English language:

- 14 (1) A clear and accurate description of the property, including model  
15 and serial number if indicated on the property;
- 16 (2) The name, residence address, phone number, and date of birth of  
17 ~~pledgor; the person selling, trading, or pledging the property;~~
- 18 (3) Date of the ~~pawn pawn, trade, or purchase~~ transaction;
- 19 (4) Type of identification and the identification number accepted from  
20 ~~pledgor; the person selling, trading, or pledging the property;~~
- 21 (5) Description of the ~~pledgor the person selling, trading, or pledging~~  
22 the property, including approximate height, weight, sex, and race;
- 23 (6) Amount of money ~~advanced; advanced, if applicable;~~
- 24 (7) The date due and the amount ~~due; due, if applicable;~~
- 25 (8) All monthly pawn charges, including interest, annual percentage  
26 rate on interest, and total recovery ~~fee; fee, if applicable;~~ and
- 27 (9) ~~Agreed~~ If applicable, agreed upon 'stated value' between pledgor  
28 and pawnbroker in case of loss or destruction of pledged item;  
29 unless otherwise noted, 'stated value' is the same as the loan value.

30 (c) The following shall be printed on all pawn tickets:

- 31 (1) The statement that 'ANY PERSONAL PROPERTY PLEDGED  
32 TO A PAWNBROKER WITHIN THIS STATE IS SUBJECT TO  
33 SALE OR DISPOSAL WHEN THERE HAS BEEN NO  
34 PAYMENT MADE ON THE ACCOUNT FOR A PERIOD OF 60  
35 DAYS PAST MATURITY DATE OF THE ORIGINAL  
36 CONTRACT. NO FURTHER NOTICE IS NECESSARY.';
- 37 (2) The statement that 'THE PLEDGOR OR SELLER OF THIS  
38 ITEM ATTESTS THAT IT IS NOT STOLEN, HAS NO LIENS  
39 OR ENCUMBRANCES, AND IS THE PLEDGOR'S TO ~~SELL~~  
40 SELL, TRADE, OR PAWN.';
- 41 (3) The statement that 'THE ITEM PAWNEED IS REDEEMABLE  
42 ONLY BY THE BEARER OF THIS TICKET OR BY  
43 IDENTIFICATION OF THE PERSON MAKING THE PAWN.';  
44 and

1 (4) A blank line for the pledger's signature of the person selling,  
2 trading, or pledging the property and the pawnbroker's signature  
3 or initials.

4 (d) The pledger person selling, trading, or pledging the property shall sign the  
5 pawn ticket and shall receive an exact copy of the pawn ticket which shall be signed  
6 or initialed by the pawnbroker or any employee of the pawnbroker. These records  
7 shall be available for inspection and pickup each regular workday by the sheriff of  
8 the county ~~or~~ and the chief of police of the municipality in which the pawnshop is  
9 located. These records shall be a correct copy of the entries made of the pawn pawn,  
10 trade, or purchase transaction and shall be carefully preserved without alteration, and  
11 shall be available during regular business hours.

12 (e) Except as otherwise provided in this Chapter, any person presenting a pawn  
13 ticket to a pawnbroker is presumed to be entitled to redeem the pledged goods  
14 described on the ticket."

15 Section 5. G.S. 91A-10 is amended by adding the following new  
16 subdivision to read:

17 "(6a) Purchase or otherwise acquire any article for resale, which is  
18 known to the pawnbroker to be stolen, unless there is a written  
19 agreement with local or State police;".

20 Section 6. G.S. 91A-11(b) reads as rewritten:

21 "(b) The provision of subsection (a) shall not apply to violations of G.S. 91A-  
22 10(6) and G.S. 91A-10(6a), which shall be prosecuted under the North Carolina  
23 criminal statutes."

24 Section 7. Chapter 91A of the General Statutes is amended by adding a  
25 new section to read:

26 "**§ 91A-15. Exemptions from Chapter.**

27 (a) This Chapter does not apply to the acquisition by the pawnbroker of the  
28 following merchandise or goods:

- 29 (1) Farm or nursery products produced by the pawnbroker.  
30 (2) Crafts or goods made by the pawnbroker.  
31 (3) The merchant's own household personal property.  
32 (4) Printed material.  
33 (5) Wood for fuel.  
34 (6) Ice, seafood, meat, poultry, livestock, eggs, dairy products, bread,  
35 cakes, or pies.  
36 (7) Motor vehicles from an authorized automobile dealer licensed  
37 pursuant to Chapter 20 of the General Statutes.

38 (b) This Chapter does not apply to transactions covered by Chapter 66 of the  
39 General Statutes."

40 Section 8. This act becomes effective October 1, 1999, and applies to any  
41 transaction made on or after that date. All persons required to be licensed by this act  
42 may apply for licensure on or before October 1, 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H

D

H1028-CSSG-002

House Bill 1028

Proposed Committee Substitute

ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Regulate Cash Converters.

(Public)

Sponsors:

Referred to:

April 14, 1999

1 A BILL TO BE ENTITLED  
2 AN ACT TO AMEND THE PAWNBROKERS MODERNIZATION ACT TO REGULATE  
3 'CASH CONVERTERS', WHICH ARE BUSINESSES THAT PURCHASE OR TRADE  
4 PROPERTY FOR RESALE FROM PERSONS WHO ARE NOT LICENSED WHOLESALE  
5 MERCHANTS.  
6 The General Assembly of North Carolina enacts:  
7 Section 1. G.S. 91A-3(2) reads as rewritten:  
8 "(2) 'Pawnbroker' means any person engaged in the  
9 business of (i) lending money on the security of  
10 pledged goods and who may also purchase merchandise  
11 for resale from dealers and traders or (ii)  
12 purchasing merchandise for resale where at least  
13 ten percent (10%) of the merchandise is purchased  
14 from persons who are not licensed wholesale  
15 merchants, as defined in G.S. 105-164.3."  
16 Section 2. G.S. 91A-3 is amended by adding a new  
17 section to read:  
18 "(7) 'Trade' means an exchange or barter of merchandise  
19 or goods in any manner or by any means with or  
20 without consideration."  
21 Section 3. G.S. 91A-4 reads as rewritten:

1 "§ 91A-4. Pawnbroker authority.

2 A pawnbroker licensee is authorized to: (i) make loans on  
3 pledges of tangible personal property, (ii) deal in bullion  
4 stocks, (iii) purchase merchandise for resale from dealers,  
5 traders, and wholesale ~~suppliers~~ and ~~(iv)~~ suppliers, (iv)  
6 purchase merchandise for resale from persons who are not dealers,  
7 traders, or wholesale suppliers, and (v) use its capital and  
8 funds in any lawful manner within the general scope and purpose  
9 of its creation. Notwithstanding the provisions of this section,  
10 no pawnbroker has the authority enumerated in this section unless  
11 ~~he~~ the pawnbroker has fully complied with the laws regulating the  
12 particular transactions involved."

13 Section 4. G.S. 91A-7 reads as rewritten:

14 "§ 91A-7. Record keeping requirements.

15 (a) Every pawnbroker shall keep consecutively numbered records  
16 of each and every purchase transaction, trade transaction, and  
17 pawn transaction, which shall correspond in all essential  
18 particulars to a detachable pawn ticket or copy thereof attached  
19 to the record.

20 (b) The pawnbroker shall, at the time of making the ~~pawn or~~  
21 ~~purchase purchase~~, trade, or pawn transaction, enter upon the  
22 pawn ticket a record of the following information which shall be  
23 typed or written in ink and in the English language:

- 24 (1) A clear and accurate description of the property,  
25 including model and serial number if indicated on  
26 the property;
- 27 (2) The name, residence address, phone number, and date  
28 of birth of ~~pledger~~, the person selling, trading,  
29 or pledging the property;
- 30 (3) Date of the ~~pawn~~ pawn, trade, or purchase  
31 transaction;
- 32 (4) Type of identification and the identification  
33 number accepted from ~~pledger~~, the person selling,  
34 trading, or pledging the property;
- 35 (5) Description of the ~~pledger~~ the person selling,  
36 trading, or pledging the property, including  
37 approximate height, weight, sex, and race;
- 38 (6) Amount of money ~~advanced~~, advanced, if applicable;
- 39 (7) The date due and the amount ~~due~~, due, if  
40 applicable;
- 41 (8) All monthly pawn charges, including interest,  
42 annual percentage rate on interest, and total  
43 recovery ~~fee~~, fee, if applicable; and

1           (9) ~~Agreed~~ If applicable, agreed upon 'stated value'  
2           between pledgor and pawnbroker in case of loss or  
3           destruction of pledged item; unless otherwise  
4           noted, 'stated value' is the same as the loan  
5           value.

6       (c) The following shall be printed on all pawn tickets:

7           (1) The statement that 'ANY PERSONAL PROPERTY PLEDGED  
8           TO A PAWNBROKER WITHIN THIS STATE IS SUBJECT TO  
9           SALE OR DISPOSAL WHEN THERE HAS BEEN NO PAYMENT  
10          MADE ON THE ACCOUNT FOR A PERIOD OF 60 DAYS PAST  
11          MATURITY DATE OF THE ORIGINAL CONTRACT. NO FURTHER  
12          NOTICE IS NECESSARY.';

13          (2) The statement that 'THE PLEDGOR OR SELLER OF THIS  
14          ITEM ATTESTS THAT IT IS NOT STOLEN, HAS NO LIENS OR  
15          ENCUMBRANCES, AND IS THE PLEDGOR'S TO ~~SELL~~ SELL,  
16          TRADE, OR PAWN.';

17          (3) The statement that 'THE ITEM PAWNEED IS REDEEMABLE  
18          ONLY BY THE BEARER OF THIS TICKET OR BY  
19          IDENTIFICATION OF THE PERSON MAKING THE PAWN.'; and

20          (4) A blank line for the ~~pledgor's~~ signature of the  
21          person selling, trading, or pledging the property  
22          and the pawnbroker's signature or initials.

23       (d) The ~~pledgor~~ person selling, trading, or pledging the  
24       property shall sign the pawn ticket and shall receive an exact  
25       copy of the pawn ticket which shall be signed or initialed by the  
26       pawnbroker or any employee of the pawnbroker. These records  
27       shall be available for inspection and pickup each regular workday  
28       by the sheriff of the county ~~or~~ and the chief of police of the  
29       municipality in which the pawnshop is located. These records  
30       shall be a correct copy of the entries made of the ~~pawn pawn,~~  
31       trade, or purchase transaction and shall be carefully preserved  
32       without alteration, and shall be available during regular  
33       business hours.

34       (e) Except as otherwise provided in this Chapter, any person  
35       presenting a pawn ticket to a pawnbroker is presumed to be  
36       entitled to redeem the pledged goods described on the ticket."

37           Section 5. G.S. 91A-10 is amended by adding the  
38       following new subdivision to read:

39           "(6a) Purchase or otherwise acquire any article for  
40           resale, which is known to the pawnbroker to be  
41           stolen, unless there is a written agreement  
42           with local or State police;".

43       Section 6. G.S. 91A-11(b) reads as rewritten:



1     "(b)     The provision of subsection (a) shall not apply to  
2 violations of G.S. 91A-10(6) and G.S. 91A-10(6a), which shall be  
3 prosecuted under the North Carolina criminal statutes."

4             Section 7.     Chapter 91A of the General Statutes is  
5 amended by adding a new section to read:

6 "§ 91A-15.   Exemptions from Chapter.

7     (a) This Chapter does not apply to the acquisition by the  
8 pawnbroker of the following merchandise or goods:

9             (1)   Farm or nursery products.

10            (2)   Printed material.

11            (3)   Wood for fuel.

12            (4)   Ice, seafood, meat, poultry, livestock, eggs, dairy  
13 products, bread, cakes, or pies.

14            (5)   Motor vehicles from an authorized automobile dealer  
15 licensed pursuant to Chapter 20 of the General  
16 Statutes.

17     (b) This Chapter does not apply to transactions covered by  
18 Article 32 of Chapter 66 of the General Statutes."

19             Section 8.     This act becomes effective October 1, 1999,  
20 and applies to any transaction made on or after that date.   All  
21 persons required to be licensed by this act may apply for  
22 licensure on or before October 1, 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H

1

HOUSE BILL 1247

Short Title: Professional Employer Organizations.

(Public)

Sponsors: Representative Cansler.

Referred to: Small Business.

April 15, 1999

1 A BILL TO BE ENTITLED  
2 AN ACT RECOGNIZING PROFESSIONAL EMPLOYER ORGANIZATIONS  
3 AND ESTABLISHING MINIMUM STANDARDS FOR SUCH  
4 ORGANIZATIONS.

5 The General Assembly of North Carolina enacts:

6 Section 1. Chapter 95 of the General Statutes is amended by adding a  
7 new Article to read:

8 "ARTICLE 5C.

9 "Professional Employer Organizations.

10 "§ 95-47.60. Definitions.

11 The following definitions apply in this Article:

- 12 (1) Administrative fee. -- A fee charged a client by a professional  
13 employer organization that is above the fees charged and applied  
14 to mandatory state and federal taxes, wages for assigned workers,  
15 and premiums and contributions for benefits provided to assigned  
16 workers.  
17 (2) Assigned worker. -- A person who has an employment relationship  
18 with both a professional employer organization and a client.  
19 (3) Client. -- A person who contracts with a professional employer  
20 organization to obtain employment services through a professional  
21 employer arrangement.  
22 (4) Person. -- An individual, corporation, partnership, firm,  
23 association, or other entity.

- 1           (5) Professional employer arrangement. -- An arrangement where a  
2 professional employer organization assigns workers to perform  
3 services for a client on an ongoing basis and the professional  
4 employer organization and client share the responsibilities for the  
5 assigned workers. The term shall not include:  
6           a. An arrangement where a person, whose principal business  
7 activity does not include entering into professional employer  
8 arrangements, shares employees with a commonly owned  
9 company, as defined in the Internal Revenue Code, and  
10 does not hold himself or herself out as a professional  
11 employer organization.  
12           b. An arrangement in which a person assumes full  
13 responsibility for the product or service performed by him  
14 or her or his or her agents and retains and exercises  
15 direction and control over any person whose services are  
16 supplied under the arrangement and, the person or his or  
17 her agents perform a specified function for the client that is  
18 separate and divisible from the client's primary business.  
19           c. A temporary help arrangement wherein an organization  
20 hires its own employees and deploys them to a client to  
21 support or supplement the client's employees.  
22           d. Any person otherwise subject to the provisions of this  
23 Article if, during any fiscal year, the total gross wages paid  
24 to his or her employees in this State pursuant to a  
25 professional employer arrangement do not exceed five  
26 percent (5%) of the total gross wages paid to all employees  
27 employed by the person in this State during the fiscal year  
28 under all arrangements described in this subsection and the  
29 person does not advertise or hold himself or herself out as  
30 providing professional employer arrangements.  
31           (6) Professional employer organization. -- Any person who provides  
32 employee services pursuant to a professional employer  
33 arrangement or who represents himself or herself as providing  
34 services pursuant to a professional employer arrangement.  
35           (7) Temporary employee. -- A worker employed by an organization  
36 that hires its own employees and deploys them to a client to  
37 support or supplement the client's full-time workforce.

38 "§ 95-47.61. Exemptions.

39 (a) The provisions of this Article shall not apply to:

- 40           (1) Labor organizations as defined by the National Labor Relations  
41 Act.  
42           (2) Any program or agency of the United States or this State.  
43           (3) Any arrangement or person described in G.S. 95-47.60(5)a.  
44 through d.

1           (4) The terms of any existing collective bargaining agreement.

2       (b) Notwithstanding the provisions of this section, a client who is a party to a  
3 collective bargaining agreement shall not be prohibited from contracting with a  
4 professional employer organization if the union consents to the contract.

5 **"§ 95-47.62. Minimum standards.**

6       (a) Each professional employer organization in this State shall:

7           (1) Execute a written contract with clients of the professional  
8 employer organization describing each party's responsibilities and  
9 duties, including the type of services that shall be rendered by the  
10 professional employer organization. The contract shall also  
11 provide that the professional employer organization: (i) reserves  
12 the right to direct and control the workers assigned to the client,  
13 but the client shall maintain such direction and control as is  
14 necessary to conduct the client's business; (ii) assumes  
15 responsibility for withholding and remitting payroll-related taxes  
16 and employee benefits from its accounts for the duration of the  
17 contract; and (iii) retains the authority to hire, terminate,  
18 discipline, and reassign workers that have been assigned to the  
19 client.

20           (2) Provide assigned workers written notice of the nature of the  
21 relationship between the professional employer organization and  
22 the client.

23           (3) For the duration of the contract with the client, pay wages and  
24 collect, report, and pay employment taxes for assigned workers  
25 from its accounts, pay unemployment taxes as required by the laws  
26 of this State, and secure any required workers' compensation  
27 coverage for assigned workers in its name or the client's name.

28       (b) A professional employer organization shall be considered an employer for  
29 purposes of withholding assigned workers' state income taxes and sponsoring and  
30 maintaining their benefits and welfare plans. Both a professional employer  
31 organization and client shall be considered the employer for purposes of coverage  
32 under the North Carolina Workers' Compensation Act, and both shall be entitled to  
33 the rights and remedies provided under that Act without regard to which of them  
34 secured and provided coverage for assigned workers under the Act.

35       (c) Subject to any contrary provisions contained in the contract between the  
36 professional employer organization and client, the professional employer arrangement  
37 shall be interpreted for purposes of insurance, bonding, and sales taxes on services as  
38 follows:

39           (1) A professional employer organization shall not be liable for the  
40 acts, errors, or omissions of a client or an assigned worker who is  
41 acting under the direction and control of a client. A client shall  
42 not be liable for the acts, errors, or omissions of a professional  
43 employer organization or an assigned worker who is acting under  
44 the direction and control of the professional employer

organization. Nothing in this subdivision shall limit any liability by the professional employer organization or client that was expressly agreed upon in the contract between the professional employer organization and client or is otherwise provided in this Article.

(2) Assigned workers shall not be deemed employees of the professional employer organization for purposes of general liability insurance, automobile insurance, fidelity bonds, surety bonds, employer's liability that is not covered by workers' compensation, or liquor liability insurance carried by the professional employer organization unless the assigned workers are expressly included in the applicable contract between the professional employer organization and client, insurance contract, or bond.

(3) If a tax on services similar to the State sales tax is enacted by the General Assembly, the administration fee, as defined in this Article, shall be the only revenue subject to the tax.

(d) The sale of professional employer services in accordance with the provisions of this Article shall not constitute the sale of insurance within the meaning of the laws of this State.

**"§ 95-47.63. Unemployment compensation insurance.**

(a) Unemployment insurance for workers assigned by a professional employer organization to a nonprofit organization, as defined by the laws of this State, shall be paid by the nonprofit organization; unemployment insurance for workers assigned to a governmental entity shall be paid by the governmental entity; and unemployment insurance for workers assigned to a client other than a nonprofit organization or governmental entity shall be paid in accordance with the provisions of this Article.

(b) During the time that a professional employer agreement is in effect, a professional employer organization shall be liable, in accordance with the laws of this State, for the payment of contributions, penalties, and interest on wages paid to assigned workers. A professional employer organization shall report and pay all contributions under its state employer account number and contribution rate.

(c) The provisions of this section shall not apply to a person who provides temporary employees to a client if the person is deemed the employer for the payment of contributions on wages paid to temporary workers.

(d) If a client ceases to pay wages to assigned workers, the client shall be subject to the termination of its employer account and experience rating records in the same manner as any other employer in accordance with the provisions of the laws of this State, but if the client subsequently becomes subject to the provisions of this Article because the client resumes paying wages, the client shall be assigned the appropriate experience rate.

(e) The provisions of this section, except as provided in subsection (a) of this section, shall not apply to nonprofit organizations and governmental entities.

**"§ 95-47.64. Effect of professional employer arrangements on laws regulating clients and assigned workers.**

1     Nothing in this Article shall exempt a client or an assigned worker from any other  
2     applicable federal, state, or local licensure or registration requirements. Any assigned  
3     worker or temporary employee who is required to be licensed, registered, or certified  
4     in this State to perform certain services shall be deemed an employee of the client for  
5     purposes of the licensure, registration, or certification. A professional employer  
6     organization shall not be deemed to be engaged in an occupation, trade, or profession  
7     that is licensed, certified, or otherwise regulated by the State or a political subdivision  
8     of the State because the professional employer organization has entered into a  
9     professional employer arrangement."

10             Section 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H

1

HOUSE BILL 1230

Short Title: Liveable State Minimum Wage.

(Public)

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Sponsors: Representatives Adams; Blue, Fitch, Hensley, Hunter, McAllister, Wainwright, and Womble.

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Referred to: Small Business.

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April 15, 1999

1 A BILL TO BE ENTITLED  
2 AN ACT AMENDING THE WAGE AND HOUR ACT TO RAISE THE STATE  
3 MINIMUM WAGE TO A LIVEABLE WAGE.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 95-25.3 reads as rewritten:

6 "(a) Every employer shall pay to each employee who in any workweek performs  
7 any work, wages of at least ~~the minimum wage set forth in paragraph 1 of section 6(a)~~  
8 ~~of the Fair Labor Standards Act, 29 U.S.C. 206(a)(1), as that wage may change from~~  
9 ~~time to time, eight dollars and fifty cents (\$8.50) per hour, except as otherwise~~  
10 provided in this section."

11 Section 2. This act becomes effective January 1, 2000.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H

1

HOUSE BILL 1277

Short Title: Pharmacy Choice/Competition.

(Public)

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Sponsors: Representatives Cole; Adams, Alexander, Allen, Arnold, Baddour, Baker, Barefoot, Blue, Bonner, Boyd-McIntyre, Bridgeman, Buchanan, Cansler, Capps, Church, Crawford, Culp, Davis, Decker, Dedmon, Easterling, Edwards, Fox, Gardner, Gillespie, Goodwin, Hackney, Hardaway, Hiatt, Hill, Howard, Hunter, Hurley, Jarrell, Jeffus, Justus, Kiser, McCombs, McCrary, Melton, Mitchell, Morris, Mosley, Nye, Oldham, Owens, Preston, Ramsey, Rayfield, Russell, Saunders, Setzer, Sexton, Sherrill, Smith, Sutton, Tallent, Teague, Thompson, Tolson, Wainwright, Walend, Warner, Warren, G. Wilson, Wright, and Yongue.

---

Referred to: Small Business.

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April 15, 1999

1 A BILL TO BE ENTITLED  
2 AN ACT TO PROMOTE COMPETITION, CHOICE, AND AVAILABILITY IN  
3 THE PURCHASE OF PRESCRIPTION DRUGS AND PHARMACY SERVICES.  
4 The General Assembly of North Carolina enacts:  
5 Section 1. Article 51 of Chapter 58 of the General Statutes is amended  
6 by adding a new section to read:  
7 "§ 58-51-36. Prescription drugs and pharmacy services benefits.  
8 (a) This section applies to health benefit plans and insurers that provide  
9 prescription card benefits for prescription drugs and pharmacy services and to third-  
10 party administrators. This section does not apply to an entity that has its own facility,  
11 employs or contracts with physicians, pharmacists, nurses, and other health care  
12 personnel, and that dispenses prescription drugs from its own pharmacy to its  
13 employees and to beneficiaries of its health benefit plan, except that this section shall  
14 apply to an entity otherwise excluded that contracts with an outside pharmacy or  
15 group of pharmacies to provide prescription drugs and pharmacy services. This  
16 section does not apply to any federal program, clinical trial program, hospital, or



1 other health care facility licensed pursuant to Chapter 131E or Chapter 122C of the  
2 General Statutes, when dispensing prescription drugs to its patients.

3 (b) The purposes of this section are:

- 4       (1) To allow persons who have prescription drug and pharmacy  
5 service benefits under a health benefit plan to redeem prescription  
6 drug benefits at the pharmacies of their choice.
- 7       (2) To allow a pharmacy the option of filling its customers'  
8 prescriptions and redeeming prescription card benefits for  
9 prescriptions, without the necessity of a pharmacy provider  
10 contract.
- 11       (3) To allow a pharmacy to establish its own charge or price for  
12 prescription drugs and pharmacy services.
- 13       (4) To promote competition among retail pharmacies that redeem  
14 prescription card benefits for prescription drugs and pharmacy  
15 services.
- 16       (5) To prohibit anticompetitive restrictions in pharmacy provider  
17 contracts.

18 (c) As used in this section:

- 19       (1) 'Co-payment' means a type of cost-sharing with respect to paying  
20 for a prescription whereby the insured or beneficiary pays a  
21 specified, usually predetermined amount per prescription, based on  
22 the nature of the prescription, usually whether brand or generic,  
23 and with the insurer or health benefit plan paying the remainder of  
24 the charge. The co-payment is incurred at the time the  
25 prescription is filled by the pharmacy and the prescription card  
26 benefit is applied to the transaction. The co-payment may be a  
27 fixed or variable amount.
- 28       (2) 'Drug' or 'prescription drug' means any substance subject to the  
29 Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 301-395, as  
30 amended.
- 31       (3) 'Health benefit plan' means an accident and health insurance  
32 policy or certificate; a hospital or medical service corporation  
33 contract; a health maintenance organization subscriber contract; a  
34 plan provided by a multiple employer welfare arrangement; or a  
35 plan provided by another benefit arrangement, to the extent  
36 permitted by the Employee Retirement Income Security Act of  
37 1974, as amended, or by any waiver of or other exception to that  
38 Act provided under federal law or regulation. 'Health benefit plan'  
39 does not mean any of the following kinds of insurance:
- 40       a. Accident.
- 41       b. Credit.
- 42       c. Disability income.
- 43       d. Long-term or nursing home care.
- 44       e. Medicare supplement.

- 1 f. Specified disease.
- 2 g. Dental or vision.
- 3 h. Coverage issued as a supplement to liability insurance.
- 4 i. Workers' compensation.
- 5 j. Medical payments under automobile or homeowners.
- 6 k. Insurance under which benefits are payable with or without
- 7 regard to fault and that are statutorily required to be
- 8 contained in any liability policy or equivalent self-insurance.
- 9 l. Hospital income or indemnity.
- 10 (4) 'Insurer' means an insurance company subject to this Chapter, a
- 11 hospital or medical service corporation organized under Article 65
- 12 of this Chapter, a health maintenance organization organized
- 13 under Article 67 of this Chapter, and a multiple employer welfare
- 14 arrangement subject to Article 49 of this Chapter.
- 15 (5) 'Pharmacy' means a pharmacy that is required to be registered
- 16 with the North Carolina Board of Pharmacy.
- 17 (6) 'Pharmacy provider contract' means a contract or agreement
- 18 between a pharmacy and an insurer or a third-party administrator
- 19 under which the pharmacy agrees to redeem prescription card
- 20 benefits provided by a health benefit plan or insurer or provided
- 21 or administered by a third-party administrator.
- 22 (7) 'Prescription card benefit' means a benefit for prescription drugs
- 23 or pharmacy services provided by a health benefit plan, an insurer,
- 24 or provided or administered by a third-party administrator. A
- 25 prescription card benefit is characterized by all of the following:
- 26 a. The prescription card benefit is evidenced by a benefit
- 27 identification number which may be contained or presented
- 28 on a prescription card.
- 29 b. The prescription card benefit is redeemed and processed by
- 30 the pharmacy at the time the prescription is filled through
- 31 electronic transmission to the insurer or third-party
- 32 administrator.
- 33 c. The insurer or third-party administrator requires the
- 34 beneficiary or person redeeming the prescription card
- 35 benefit to pay the pharmacy a co-payment predetermined by
- 36 the insurer or third-party administrator.
- 37 d. The insurer or third-party administrator pays a portion of
- 38 the cost for the prescription to the pharmacy.
- 39 (8) 'Redeem' means the process by which a person who has a
- 40 prescription card benefit applies through a pharmacy to use the
- 41 prescription card benefit on the cost of a prescription being filled
- 42 by the pharmacy. This process includes an application for use of
- 43 the prescription card benefit by the pharmacy to the insurer or
- 44 third-party administrator, with the application usually being made

1 by electronic transmission through computers, and with electronic  
2 transmission response from the insurer or third-party administrator  
3 verifying the prescription card benefit, the amount to be  
4 reimbursed to the pharmacy for the prescription transaction, and  
5 the amount, if any, of a co-payment to be paid by the beneficiary.

6 (9) 'Third-party administrator' means a person who does any of the  
7 following in connection with a health benefit plan or a prescription  
8 card benefit:

9 a. Directly or indirectly solicits, effects, or provides coverage.

10 b. Underwrites.

11 c. Collects charges or premiums.

12 d. Adjusts or settles claims.

13 (d) A person who has a prescription card benefit may redeem the prescription card  
14 benefit at any pharmacy in this State willing to redeem the prescription card benefit.

15 (e) A pharmacy may redeem a person's prescription card benefit irrespective of  
16 whether the pharmacy has entered into a pharmacy provider contract with the entity  
17 providing or administering the prescription card benefit. When a pharmacy redeems  
18 a prescription card benefit, the insurer or third-party administrator shall provide to  
19 the pharmacy as part of the information transmitted the renewal date of the person's  
20 prescription card benefits.

21 (f) An insurer or third-party administrator may not restrict or coerce a  
22 beneficiary's choice of pharmacy at which to redeem the prescription card benefit.

23 (g) Nothing in this section prevents a pharmacy from entering into a pharmacy  
24 provider contract.

25 (h) In redeeming prescription card benefits, a pharmacy may establish its own  
26 price or charge for the prescription and pharmacy services, unless the pharmacy has  
27 agreed otherwise by the terms of a pharmacy provider contract.

28 (i) If the price or charge for the prescription and pharmacy services established by  
29 the pharmacy is greater than the prescription card benefit, the person redeeming the  
30 prescription card benefit shall be responsible for paying the pharmacy the difference  
31 between the prescription card benefit and the price or charge for the prescription and  
32 services.

33 (j) If a person redeems a prescription card benefit at a pharmacy that is not a party  
34 to a pharmacy provider contract with an insurer or third-party administrator, then the  
35 insurer or third-party administrator shall redeem the prescription card benefit and  
36 reimburse the pharmacy in the same manner, to the same extent, and at the same rate  
37 as it would have had the prescription card benefit been redeemed pursuant to a  
38 pharmacy provider contract.

39 (k) At the earliest practical time, before filling the prescription and if the  
40 information is available, the pharmacy shall inform the person redeeming the  
41 prescription card benefit of any difference between the sum of the prescription card  
42 benefit and the co-payment and the price charged by the pharmacy.

43 (l) The pharmacy may charge the person redeeming the prescription card benefit  
44 for services that are in addition to the filling of the prescription, including, but not

1 limited to, delivery services, unless the pharmacy has agreed otherwise by the terms  
2 of a pharmacy provider contract.

3 (m) An insurer or third-party administrator that provides a prescription card  
4 benefit shall inform health benefit plan policyholders that the prescription card  
5 benefit may be redeemed at the pharmacy of the policyholder's choice. The  
6 information shall be communicated to the policyholder through reasonable means, on  
7 a timely basis, and at regular intervals, at least quarterly. If the information provided  
8 states that the cost to the policyholder may be higher based on a pharmacy's price for  
9 the prescription and services, then the information shall also provide in the same  
10 manner and format that the cost to the policyholder may be lower based on the  
11 pharmacy's price for the prescription and services. The information required by this  
12 section shall be included in a written summary or description of the health benefit  
13 plan, plan summaries, and explanation of benefits as well as other written  
14 communications furnished to policyholders where prescription benefits are  
15 mentioned.

16 (n) An insurer or third-party administrator may communicate with its  
17 policyholders the names and locations of pharmacies that have agreed by pharmacy  
18 provider contracts to fill prescriptions without any charge to the policyholder other  
19 than the co-payment required by the insurer or third-party administrator. If the  
20 communication is made, however, it must also state in the same communication and  
21 in the same format that the prescription card benefit may be redeemed at any  
22 pharmacy in the State willing to redeem it.

23 (o) Any provision of a pharmacy provider contract that is in conflict with this  
24 section is void to the extent of the conflict.

25 (p) An insurer or third-party administrator that violates this section shall be subject  
26 to G.S. 58-2-70. However, if pursuant to G.S. 58-2-70(d), monetary civil penalties are  
27 directed by the Commissioner, for the purposes of this section, these penalties shall  
28 not be less than one thousand dollars (\$1,000) per day, nor more than ten thousand  
29 dollars (\$10,000) per day.

30 (q) If anything in this section conflicts with G.S. 58-51-37, this section controls to  
31 the extent of the conflict."

32 Section 2. If any provision of this act or the application of this act to any  
33 person or circumstance is held invalid, the other provisions or applications of this act  
34 shall be given effect without the invalid provisions or applications.

35 Section 3. This act applies to every health benefit plan and pharmacy  
36 provider contract as defined in Section 1 of this act that is delivered, issued for  
37 delivery, or renewed on or after October 1, 1999. For purposes of this act, renewal  
38 of a health benefit plan is presumed to occur on each anniversary of the date on  
39 which coverage was first effective on the person or persons covered by the health  
40 benefit plan.

41 Section 4. This act is effective when it becomes law.



# HOUSE BILL 1277: Pharmacy Choice/Competition

## BILL ANALYSIS

**Committee:** House Small Business

**Date:** April 22, 1999

**Version:** First Edition

**Introduced by:** Representative Cole

**Summary by:** Rick Zechini

Committee Counsel

**SUMMARY:** *House Bill 1277 allows a person who has a prescription card benefit to redeem the prescription card benefit at any pharmacy in the State willing to redeem the prescription card benefit irrespective of whether the pharmacy has entered into a pharmacy provider contract with the insurer or administrator providing the prescription card benefit.*

**CURRENT LAW:** A person wishing to redeem a prescription card benefit at a pharmacy that has not entered into a pharmacy provider contract with the insurer or administrator providing the prescription card benefit must pay for the cost of filling the prescription.

**BILL ANALYSIS:** House Bill 1277 allows a person who has a prescription card benefit to redeem the prescription card benefit at any pharmacy in the State willing to redeem the prescription card benefit irrespective of whether the pharmacy has entered into a pharmacy provider contract with the insurer or administrator providing the prescription card benefit. A prescription card benefit is defined as a benefit for prescription drugs evidenced by a prescription benefit card that is redeemed and processed by a pharmacy at the time the prescription is filled through electronic transmission to the insurer or third-party administrator. The person redeeming the prescription card benefit is required to pay a co-payment predetermined by the insurer or third-party administrator.

House Bill 1277 provides that a pharmacy that is not a party to a pharmacy provider contract (non-contract pharmacy) may establish its own price for prescription services. An insurer or administrator is required to reimburse a non-contract pharmacy at the same rate as a pharmacy that is a party to a pharmacy provider contract (contract pharmacy). A person redeeming a prescription card benefit at a non-contract pharmacy is responsible for paying the difference between the prescription card benefit and the cost of filling the prescription charged by the non-contract pharmacy. A non-contract pharmacy is required "at the earliest practical time, before filling the prescription and if the information is available," to notify the beneficiary redeeming the prescription card benefit of any difference between the sum of the prescription card benefit and co-payment and the price charged by the non-contract pharmacy. House Bill 1277 provides that an insurer or administrator may not restrict or coerce a beneficiary's choice of pharmacy and must inform beneficiaries of their option to redeem their prescription card benefits at non-contract pharmacies.

**BACKGROUND:** G.S. 58-51-37 requires any entity providing a health plan that includes prescription drug benefits from contract pharmacies to offer all pharmacies in the geographic coverage area of the plan an opportunity to participate in the plan.

# VISITOR REGISTRATION SHEET

Small Business      4-21-99

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

| NAME                   | FIRM OR AGENCY          |
|------------------------|-------------------------|
| 1. Paul Mahoney        | NC ASSN OF HEALTH PLANS |
| 2. Harry Tople         |                         |
| 3. Dick Hatch          | AAFP                    |
| 4. Oscar Smith         | AAFP                    |
| 5. Troy Green          | SEANC                   |
| 6. Richard Westcott    | UTU                     |
| 7. Sherry Bradley      | SEANC                   |
| 8. Wendy Mills         | SEANC                   |
| 9. Lynn Braswell       | MGHS                    |
| 10. Barrett Brewer     | Capital Strategies      |
| 11. Jani Dorot         | NCAI/P                  |
| 12. Lacy Maddy         | NC Dept of Labor        |
| 13. Jennifer Hobbs     | Student                 |
| 14. Caroline Fleming   | Student                 |
| 15. Michelle McPherson | Atty Gen                |
| 16. L.B. Pickett, Jr   | NAACP                   |
| 17. FRANK RESTON       | NCRMA                   |
| 18. Dany Derget        | NASW-NC                 |
| 19. Tom Harris         | N.C. Dept. of Labor     |
| 20. Jo - [unclear]     | NC DOL                  |
| 21. Young Maddy        | NC DOL                  |

## VISITOR REGISTRATION SHEET

12:00

Small Business 4/21/99

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

| NAME                  | FIRM OR AGENCY                   |
|-----------------------|----------------------------------|
| 1. Nancy Thompson     | UNCCB                            |
| 2. Crissy Porter      | Bond Associates                  |
| 3. Tommy Hurlon       | Harlem Consulty                  |
| 4. Harold H. Webb     | New millennium                   |
| 5. Lockhart Oyer      | NC-ESC                           |
| 6. Lynice R. Williams | NC Fair Share                    |
| 7. Thad Davis         | NCAE                             |
| 8. Mari Senn          | GLYO- Wellcome                   |
| 9. Mrs. Ann           | NC State AFL-CIO                 |
| 10. Philann James     | LA Harris & Assoc.               |
| 11. Owen Schmidt      | NC Justice Club                  |
| 22. Chuck Case        | Hunt & Williams                  |
| 23. Jim Blackburn     | Assoc. County Commr's            |
| 24. Frank Gray        | N.C. Assn. of Personnel Services |
| 25. George Hearn      | Johnson Mercer Hearn & Kenegun   |
| 26. M. K. Samoy       | NCRPA                            |
| 27. James Andrews     | NC State AFL-CIO                 |
| 28.                   |                                  |
| 29.                   |                                  |
| 30.                   |                                  |
| 31.                   |                                  |

**NORTH CAROLINA HOUSE OF REPRESENTATIVES  
COMMITTEE MEETING NOTICE**

You are hereby notified that the Committee on **SMALL BUSINESS** will meet as follows:

**DAY & DATE:**        **Thursday, April 22, 1999**

**TIME:**                **15 Minutes after Session**

**LOCATION:**          **612 LOB**

The following bills will be considered (Bill # & Short Title):  
**HB 1277 Pharmacy Choice/Competition**

Respectfully,

Representative Dan Blue  
Chairman

I hereby certify this notice was filed by the committee assistant at the following offices at  
**10:20am on Thursday, April 22, 1999.**

\_\_\_ Principal Clerk  
\_\_\_ Reading Clerk - House Chamber

Lin Threatt (Committee Assistant)



**APRIL 22, 1999**

**CALL MEETING – NO AGENDA NECESSARY PER CHAIR**

# HOUSE SMALL BUSINESS COMMITTEE

Minutes  
April 22, 1999

The House Committee on Small Business met on April 22, 1999 in Room 612, Legislative Office Building. The following members were present: Rep. Dan Blue, Chair, Representatives Gordon Allen, Nelson Cole, Stanley Fox, William Hiatt, Edd Nye, John Rayfield, Mitchell Setzer, Trudi Walend and Andrew Dedmon.

Rep. Blue called the meeting to order at 6:15pm and welcomed the members and visitors. He reminded everyone that the purpose of the meeting was to continue discussion on HB 1277 Pharmacy Choice Competition. After hearing from several visitors on the bill Rep. Blue asked the committee if they were ready to take a vote on the bill. Rep. Nye moved for a favorable report, and Rep. Rayfield asked if the bill could be sent to the floor with no prejudice. Rep. Walend stated that she wanted the bill to be heard by absent committee members and called for another meeting. Upon motion of the chair, the bill would be voted on by the members present. The committee then voted with a majority voting aye on the motion of Rep. Nye to give the bill a favorable report.

Meeting was adjourned at 6:50pm.



Representative Daniel T. Blue, Jr., Chair



Lin Threatt, Committee Assistant

**1999 COMMITTEE REPORT  
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Daniel T. Blue, Jr.** for the Committee on **Small Business.**

---

☐ Committee Substitute for

H.B. 1277 A BILL TO BE ENTITLED AN ACT TO PROMOTE COMPETITION,  
CHOICE, AND AVAILABILITY IN THE PURCHASE OF PRESCRIPTION DRUGS AND  
PHARMACY SERVICES.

☒ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on  
Appropriations ☐ Finance ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the  
Committee on Appropriations ☐ Finance ☐.

☐ With a favorable report as to committee substitute bill (# ), ☐ which changes the title,  
unfavorable as to (original bill) (Committee Substitute Bill # ), (and recommendation  
that the committee substitute bill # ) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (# ), ☐ which changes  
the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/24/99

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H

1

HOUSE BILL 1277

Short Title: Pharmacy Choice/Competition.

(Public)

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Sponsors: Representatives Cole; Adams, Alexander, Allen, Arnold, Baddour, Baker, Barefoot, Blue, Bonner, Boyd-McIntyre, Bridgeman, Buchanan, Cansler, Capps, Church, Crawford, Culp, Davis, Decker, Dedmon, Easterling, Edwards, Fox, Gardner, Gillespie, Goodwin, Hackney, Hardaway, Hiatt, Hill, Howard, Hunter, Hurley, Jarrell, Jeffus, Justus, Kiser, McCombs, McCrary, Melton, Mitchell, Morris, Mosley, Nye, Oldham, Owens, Preston, Ramsey, Rayfield, Russell, Saunders, Setzer, Sexton, Sherrill, Smith, Sutton, Tallent, Teague, Thompson, Tolson, Wainwright, Walend, Warner, Warren, G. Wilson, Wright, and Yongue.

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Referred to: Small Business.

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April 15, 1999

1 A BILL TO BE ENTITLED  
2 AN ACT TO PROMOTE COMPETITION, CHOICE, AND AVAILABILITY IN  
3 THE PURCHASE OF PRESCRIPTION DRUGS AND PHARMACY SERVICES.  
4 The General Assembly of North Carolina enacts:  
5 Section 1. Article 51 of Chapter 58 of the General Statutes is amended  
6 by adding a new section to read:  
7 "§ 58-51-36. Prescription drugs and pharmacy services benefits.  
8 (a) This section applies to health benefit plans and insurers that provide  
9 prescription card benefits for prescription drugs and pharmacy services and to third-  
10 party administrators. This section does not apply to an entity that has its own facility,  
11 employs or contracts with physicians, pharmacists, nurses, and other health care  
12 personnel, and that dispenses prescription drugs from its own pharmacy to its  
13 employees and to beneficiaries of its health benefit plan, except that this section shall  
14 apply to an entity otherwise excluded that contracts with an outside pharmacy or  
15 group of pharmacies to provide prescription drugs and pharmacy services. This  
16 section does not apply to any federal program, clinical trial program, hospital, or

1 other health care facility licensed pursuant to Chapter 131E or Chapter 122C of the  
2 General Statutes, when dispensing prescription drugs to its patients.

3 (b) The purposes of this section are:

- 4       (1) To allow persons who have prescription drug and pharmacy  
5 service benefits under a health benefit plan to redeem prescription  
6 drug benefits at the pharmacies of their choice.  
7       (2) To allow a pharmacy the option of filling its customers'  
8 prescriptions and redeeming prescription card benefits for  
9 prescriptions, without the necessity of a pharmacy provider  
10 contract.  
11       (3) To allow a pharmacy to establish its own charge or price for  
12 prescription drugs and pharmacy services.  
13       (4) To promote competition among retail pharmacies that redeem  
14 prescription card benefits for prescription drugs and pharmacy  
15 services.  
16       (5) To prohibit anticompetitive restrictions in pharmacy provider  
17 contracts.

18 (c) As used in this section:

- 19       (1) 'Co-payment' means a type of cost-sharing with respect to paying  
20 for a prescription whereby the insured or beneficiary pays a  
21 specified, usually predetermined amount per prescription, based on  
22 the nature of the prescription, usually whether brand or generic,  
23 and with the insurer or health benefit plan paying the remainder of  
24 the charge. The co-payment is incurred at the time the  
25 prescription is filled by the pharmacy and the prescription card  
26 benefit is applied to the transaction. The co-payment may be a  
27 fixed or variable amount.  
28       (2) 'Drug' or 'prescription drug' means any substance subject to the  
29 Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 301-395, as  
30 amended.  
31       (3) 'Health benefit plan' means an accident and health insurance  
32 policy or certificate; a hospital or medical service corporation  
33 contract; a health maintenance organization subscriber contract; a  
34 plan provided by a multiple employer welfare arrangement; or a  
35 plan provided by another benefit arrangement, to the extent  
36 permitted by the Employee Retirement Income Security Act of  
37 1974, as amended, or by any waiver of or other exception to that  
38 Act provided under federal law or regulation. 'Health benefit plan'  
39 does not mean any of the following kinds of insurance:  
40       a. Accident.  
41       b. Credit.  
42       c. Disability income.  
43       d. Long-term or nursing home care.  
44       e. Medicare supplement.

- f. Specified disease.
  - g. Dental or vision.
  - h. Coverage issued as a supplement to liability insurance.
  - i. Workers' compensation.
  - j. Medical payments under automobile or homeowners.
  - k. Insurance under which benefits are payable with or without regard to fault and that are statutorily required to be contained in any liability policy or equivalent self-insurance.
  - l. Hospital income or indemnity.
- (4) 'Insurer' means an insurance company subject to this Chapter, a hospital or medical service corporation organized under Article 65 of this Chapter, a health maintenance organization organized under Article 67 of this Chapter, and a multiple employer welfare arrangement subject to Article 49 of this Chapter.
- (5) 'Pharmacy' means a pharmacy that is required to be registered with the North Carolina Board of Pharmacy.
- (6) 'Pharmacy provider contract' means a contract or agreement between a pharmacy and an insurer or a third-party administrator under which the pharmacy agrees to redeem prescription card benefits provided by a health benefit plan or insurer or provided or administered by a third-party administrator.
- (7) 'Prescription card benefit' means a benefit for prescription drugs or pharmacy services provided by a health benefit plan, an insurer, or provided or administered by a third-party administrator. A prescription card benefit is characterized by all of the following:
- a. The prescription card benefit is evidenced by a benefit identification number which may be contained or presented on a prescription card.
  - b. The prescription card benefit is redeemed and processed by the pharmacy at the time the prescription is filled through electronic transmission to the insurer or third-party administrator.
  - c. The insurer or third-party administrator requires the beneficiary or person redeeming the prescription card benefit to pay the pharmacy a co-payment predetermined by the insurer or third-party administrator.
  - d. The insurer or third-party administrator pays a portion of the cost for the prescription to the pharmacy.
- (8) 'Redeem' means the process by which a person who has a prescription card benefit applies through a pharmacy to use the prescription card benefit on the cost of a prescription being filled by the pharmacy. This process includes an application for use of the prescription card benefit by the pharmacy to the insurer or third-party administrator, with the application usually being made

1 by electronic transmission through computers, and with electronic  
2 transmission response from the insurer or third-party administrator  
3 verifying the prescription card benefit, the amount to be  
4 reimbursed to the pharmacy for the prescription transaction, and  
5 the amount, if any, of a co-payment to be paid by the beneficiary.

6 (9) 'Third-party administrator' means a person who does any of the  
7 following in connection with a health benefit plan or a prescription  
8 card benefit:

9 a. Directly or indirectly solicits, effects, or provides coverage.

10 b. Underwrites.

11 c. Collects charges or premiums.

12 d. Adjusts or settles claims.

13 (d) A person who has a prescription card benefit may redeem the prescription card  
14 benefit at any pharmacy in this State willing to redeem the prescription card benefit.

15 (e) A pharmacy may redeem a person's prescription card benefit irrespective of  
16 whether the pharmacy has entered into a pharmacy provider contract with the entity  
17 providing or administering the prescription card benefit. When a pharmacy redeems  
18 a prescription card benefit, the insurer or third-party administrator shall provide to  
19 the pharmacy as part of the information transmitted the renewal date of the person's  
20 prescription card benefits.

21 (f) An insurer or third-party administrator may not restrict or coerce a  
22 beneficiary's choice of pharmacy at which to redeem the prescription card benefit.

23 (g) Nothing in this section prevents a pharmacy from entering into a pharmacy  
24 provider contract.

25 (h) In redeeming prescription card benefits, a pharmacy may establish its own  
26 price or charge for the prescription and pharmacy services, unless the pharmacy has  
27 agreed otherwise by the terms of a pharmacy provider contract.

28 (i) If the price or charge for the prescription and pharmacy services established by  
29 the pharmacy is greater than the prescription card benefit, the person redeeming the  
30 prescription card benefit shall be responsible for paying the pharmacy the difference  
31 between the prescription card benefit and the price or charge for the prescription and  
32 services.

33 (j) If a person redeems a prescription card benefit at a pharmacy that is not a party  
34 to a pharmacy provider contract with an insurer or third-party administrator, then the  
35 insurer or third-party administrator shall redeem the prescription card benefit and  
36 reimburse the pharmacy in the same manner, to the same extent, and at the same rate  
37 as it would have had the prescription card benefit been redeemed pursuant to a  
38 pharmacy provider contract.

39 (k) At the earliest practical time, before filling the prescription and if the  
40 information is available, the pharmacy shall inform the person redeeming the  
41 prescription card benefit of any difference between the sum of the prescription card  
42 benefit and the co-payment and the price charged by the pharmacy.

43 (l) The pharmacy may charge the person redeeming the prescription card benefit  
44 for services that are in addition to the filling of the prescription, including, but not

1 limited to, delivery services, unless the pharmacy has agreed otherwise by the terms  
2 of a pharmacy provider contract.

3 (m) An insurer or third-party administrator that provides a prescription card  
4 benefit shall inform health benefit plan policyholders that the prescription card  
5 benefit may be redeemed at the pharmacy of the policyholder's choice. The  
6 information shall be communicated to the policyholder through reasonable means, on  
7 a timely basis, and at regular intervals, at least quarterly. If the information provided  
8 states that the cost to the policyholder may be higher based on a pharmacy's price for  
9 the prescription and services, then the information shall also provide in the same  
10 manner and format that the cost to the policyholder may be lower based on the  
11 pharmacy's price for the prescription and services. The information required by this  
12 section shall be included in a written summary or description of the health benefit  
13 plan, plan summaries, and explanation of benefits as well as other written  
14 communications furnished to policyholders where prescription benefits are  
15 mentioned.

16 (n) An insurer or third-party administrator may communicate with its  
17 policyholders the names and locations of pharmacies that have agreed by pharmacy  
18 provider contracts to fill prescriptions without any charge to the policyholder other  
19 than the co-payment required by the insurer or third-party administrator. If the  
20 communication is made, however, it must also state in the same communication and  
21 in the same format that the prescription card benefit may be redeemed at any  
22 pharmacy in the State willing to redeem it.

23 (o) Any provision of a pharmacy provider contract that is in conflict with this  
24 section is void to the extent of the conflict.

25 (p) An insurer or third-party administrator that violates this section shall be subject  
26 to G.S. 58-2-70. However, if pursuant to G.S. 58-2-70(d), monetary civil penalties are  
27 directed by the Commissioner, for the purposes of this section, these penalties shall  
28 not be less than one thousand dollars (\$1,000) per day, nor more than ten thousand  
29 dollars (\$10,000) per day.

30 (q) If anything in this section conflicts with G.S. 58-51-37, this section controls to  
31 the extent of the conflict."

32 Section 2. If any provision of this act or the application of this act to any  
33 person or circumstance is held invalid, the other provisions or applications of this act  
34 shall be given effect without the invalid provisions or applications.

35 Section 3. This act applies to every health benefit plan and pharmacy  
36 provider contract as defined in Section 1 of this act that is delivered, issued for  
37 delivery, or renewed on or after October 1, 1999. For purposes of this act, renewal  
38 of a health benefit plan is presumed to occur on each anniversary of the date on  
39 which coverage was first effective on the person or persons covered by the health  
40 benefit plan.

41 Section 4. This act is effective when it becomes law.



## VISITOR REGISTRATION SHEET

## SMALL BUSINESS

4-22

**, 1999**

Name of Committee

Date \_\_\_\_\_

**VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK**

[illegible]

**NORTH CAROLINA HOUSE OF REPRESENTATIVES  
COMMITTEE MEETING NOTICE**

You are hereby notified that the Committee on **SMALL BUSINESS** will meet as follows:

**DAY & DATE:**      **Wednesday, May 12, 1999**

**TIME:**              **12:00 noon**

**LOCATION:**        **421 LOB**

The following bills will be considered (Bill # & Short Title):  
**Presentation by Secretary of Commerce**

Respectfully,

Representative Daniel T. Blue, Jr.  
Chairman

I hereby certify this notice was filed by the committee assistant at the following offices at  
**4:15pm on May 10, 1999.**

\_\_\_\_ Principal Clerk  
\_\_\_\_ Reading Clerk - House Chamber

Lin Threatt (Committee Assistant)

# **AGENDA**

## **HOUSE COMMITTEE ON SMALL BUSINESS**

**May 12, 1999  
Room 421 LOB**

**Call to Order**

~~Representative Dan Blue~~ *Rep. Edith Warren*

**Presentation by NC Department of Commerce**

**Discussion**

**Closing Remarks**

**Representative Dan Blue**

**Adjournment**

# HOUSE SMALL BUSINESS COMMITTEE

Minutes  
May 12, 1999

The House Committee on Small Business met on May 12, 1999 in Room 421 Legislative Office Building. The following members were present: Rep. Blue, Chair, Rep. Edith Warren, Vice Chair, and Representatives Nelson Cole, Stan Fox, Bill Hiatt, Amelia Morris, Edd Nye, John Rayfield, and Trudi Walend.

Rep. Edith Warren called the meeting to order at 12:10pm and welcomed the members, visitors, and Secretary Rick Carlisle from the NC Commerce Department. Secretary Carlisle discussed the topic of Small Business in North Carolina, and detailed what the State does for small businesses. First, he began with the history of how the State became more involved in providing information for small businesses back during the 80s, and the impact of GPAC, the Government Performance Audit Committee, in 1991. Secretary Carlisle then gave a brief description of various organizations within the State and private sector, that provide information, training, and financing to small businesses. He also talked about how small businesses can take advantage of tax credits by increasing the number of employees and incorporating technology in their business.

One of the main goals the State would like to achieve is to provide "one shop services." Another goal is to provide more capital services for small businesses.

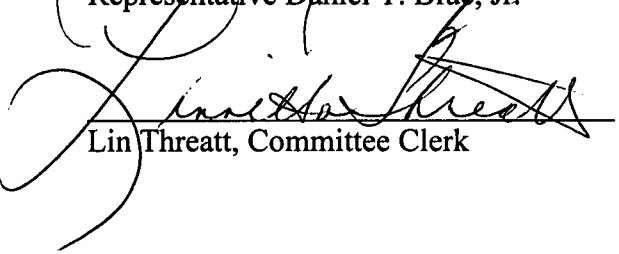
A suggestion was also made by the Secretary to look into setting up a referral system through the Secretary of States Office that would automatically refer an individual to the Small Business Technology Development Center when they apply for a business license. It was also suggested that something could be done on the State's website to guide individuals to various resources. There was dialogue about developing a State sponsored venture capital fund for small businesses by using "the float", which the State Treasurer would be more willing to endorse.

Ms. Perry Morgan, representative of the National Federation of Independent Business, was asked to make some brief remarks about what the organization is doing and issues they have been working on.

The meeting was adjourned at 12:55 pm.



Representative Daniel T. Blue, Jr.



Lin Threath, Committee Clerk

Small Business

5-12-99  
Date

[illegible]

## VISITOR REGISTRATION SHEET

## SMALL BUSINESS

**, 1999**

Name of Committee

Date \_\_\_\_\_

**VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK**

[illegible]

**NORTH CAROLINA HOUSE OF REPRESENTATIVES  
COMMITTEE MEETING NOTICE**

You are hereby notified that the Committee on **SMALL BUSINESS** will meet as follows:

**DAY & DATE:**      **Wednesday, May 26, 1999**

**TIME:**              **12:00 noon**

**LOCATION:**        **421 LOB**

The following bills will be considered (Bill # & Short Title):  
**Presentation by Small Business Technology Development Center**

**SB 660 Revised Limited Liability Company Act**

Respectfully,

Representative Dan Blue  
Chairman

I hereby certify this notice was filed by the committee assistant at the following offices at  
**12:15 pm on May 24, 1999.**

\_\_\_\_Principal Clerk  
\_\_\_\_Reading Clerk - House Chamber

Lin Threatt (Committee Assistant)

# **AGENDA**

## **HOUSE COMMITTEE ON SMALL BUSINESS**

**May 26, 1999  
Room 421 LOB**

**Call to Order**

**Rep. Dan Blue**

**SB 660 – Revised Limited Liability Company Act  
Sponsor, Senator Clodfelter**

**Presentation by NC Small Business Technology Development Center**

**Closing Remarks**

**Rep. Dan Blue**

**Adjournment**



# HOUSE SMALL BUSINESS COMMITTEE

## Minutes

May 26, 1999

The House Committee on Small Business met on May 26, 1990 in Room 421, Legislative Office Building. The following members were present: Rep. Dan Blue, Chair, Rep. Edith Warren, Vice Chair, Representatives Allen Gordon, John Bridgeman, Nelson Cole, Stan Fox, William Hiatt, Amelia Morris, Edd Nye, John Rayfield, Mitchell Setzer, and Trudi Walend.

Rep. Blue called the meeting to order at 12:00 noon. Senate Bill 660, Revised Limited Liability Company Act was before the committee. Rep. Blue asked Sen. Clodfelter, sponsor of the bill, to come forward to explain the bill.

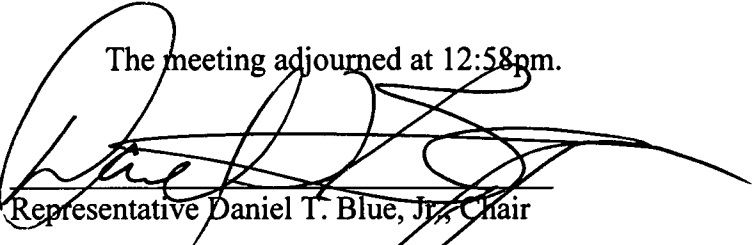
Rep. Nelson Cole asked the question how does this bill compare to a sub-chapter S corporation? Sen. Clodfelter responded that this bill was a pass through entity for tax purposes and would be handled the same. Rep. Cole asked if he is a (Sub-S) now, what advantage would he gain if he went LLC (Limited Liability Company Act) and could not make the conversion without changing stocks or having to go through to liquidate a corporation? Sen. Clodfelter responded that there is another bill, Senate Bill 835 pending from the Senate that would provide a procedure for converting from a Sub-chapter S Corporation to a LLC or back. This bill was created to be consistent with the provisions of Senate Bill 835. The advantages would be the flexibility of managing it internally like a partnership. The operating agreement is the basic document, such as the bylaws of a corporation, but less formal and more flexible. For tax purposes a Subchapter S and an LLC are going to be identical and you are not limited by the numbers. An LLC can have a single member.

Rep. Rayfield asked the question if reporting tax filings are different? Sen. Clodfelter responded that essentially the bill would require the same tax filings with the Secretary of States Office. Rep. Fox asked if trusts qualify to be an LLC? Senator Clodfelter's response was that he didn't believe that a trust would qualify.

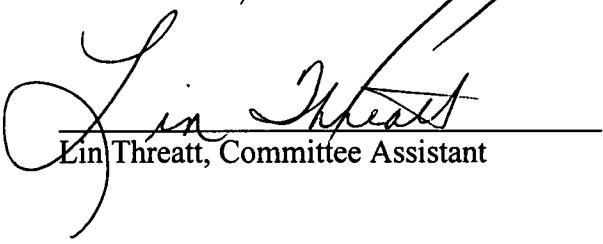
Rep. Blue asked if there were any further questions, and what was the pleasure of the committee? Rep. Rayfield made the motion for a favorable report on SB660, with the committee unanimously for the motion.

The next order of business was to hear a presentation by Mark King with the NC Small Business Technology Development Center. The Center is part of the University of NC System with offices affiliated with most of the constituent campuses. Mr. King discussed the Center's outreach efforts to provide information to small businesses in North Carolina to help boost the State's economic development.

The meeting adjourned at 12:58pm.



Representative Daniel T. Blue, Jr., Chair



Lin Threatt, Committee Assistant

**1999 COMMITTEE REPORT  
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Daniel T. Blue, Jr.** for the Committee on **SMALL BUSINESS**.

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☒ Committee Substitute for

S.B. 660 A BILL TO BE ENTITLED AN ACT TO AMEND THE LAW GOVERNING LIMITED LIABILITY COMPANIES TO CLARIFY CERTAIN DEFINITIONS OF TERMS, TO PROVIDE MORE FLEXIBILITY WITH REGARD TO ORGANIZERS, TO CLARIFY THAT THE FILING OF THE ARTICLES OF ORGANIZATION IS CONCLUSIVE EVIDENCE OF THE FORMATION OF A COMPANY, TO REVISE THE CIRCUMSTANCES AND RESTRICTIONS REGARDING FORMATION OF A COMPANY, TO PROVIDE FOR THE INDEXING OF REAL ESTATE RECORDS TO REFLECT MERGERS AND CONVERSIONS OF BUSINESS ENTITIES, TO ALLOW ALTERNATIVE MANAGEMENT STRUCTURES, TO PROVIDE FOR WITHDRAWAL FROM A COMPANY ONLY AS PERMITTED BY THE ARTICLES OF ORGANIZATION OR WRITTEN OPERATING AGREEMENT, TO REVISE THE PERMITTED GROUNDS FOR DISSOLUTION, AND TO CLARIFY THAT A COMPANY MAY ENGAGE IN A BUSINESS UNDER AN ASSUMED NAME.

☒ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐.

☐ With a favorable report as to committee substitute bill (# ), ☐ which changes the title, unfavorable as to (original bill) (Committee Substitute Bill # ), (and recommendation that the committee substitute bill # ) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (# ), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

2

SENATE BILL 660  
Commerce Committee Substitute Adopted 4/20/99

Short Title: Revised Limited Liability Company Act.

(Public)

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Sponsors:

---

Referred to:

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March 31, 1999

1                                   A BILL TO BE ENTITLED  
2 AN ACT TO AMEND THE LAW GOVERNING LIMITED LIABILITY  
3 COMPANIES TO CLARIFY CERTAIN DEFINITIONS OF TERMS, TO  
4 PROVIDE MORE FLEXIBILITY WITH REGARD TO ORGANIZERS, TO  
5 CLARIFY THAT THE FILING OF THE ARTICLES OF ORGANIZATION IS  
6 CONCLUSIVE EVIDENCE OF THE FORMATION OF A COMPANY, TO  
7 REVISE THE CIRCUMSTANCES AND RESTRICTIONS REGARDING  
8 FORMATION OF A COMPANY, TO PROVIDE FOR THE INDEXING OF  
9 REAL ESTATE RECORDS TO REFLECT MERGERS AND CONVERSIONS  
10 OF BUSINESS ENTITIES, TO ALLOW ALTERNATIVE MANAGEMENT  
11 STRUCTURES, TO PROVIDE FOR WITHDRAWAL FROM A COMPANY  
12 ONLY AS PERMITTED BY THE ARTICLES OF ORGANIZATION OR  
13 WRITTEN OPERATING AGREEMENT, TO REVISE THE PERMITTED  
14 GROUNDS FOR DISSOLUTION, AND TO CLARIFY THAT A COMPANY  
15 MAY ENGAGE IN A BUSINESS UNDER AN ASSUMED NAME.

16 The General Assembly of North Carolina enacts:

17

18 **PART I. DEFINITIONS.**

19                   Section 1. G.S. 57C-1-03 reads as rewritten:

20 **"§ 57C-1-03. Definitions.**

21   The following definitions apply in this Chapter, unless otherwise specifically  
22 provided:

- (1) Articles of organization. -- The document filed under G.S. 57C-2-20 of this Chapter for the purpose of forming a limited liability company, as amended or restated.
- (2) Bankrupt. -- Bankrupt under the United States Bankruptcy Code, as amended, or insolvent under State insolvency laws.
- (3) Business. -- Any lawful trade, ~~occupation,~~ investment, or other purpose or ~~commercial activity~~ activity, whether or not such trade, investment, purpose, or activity is carried on ~~engaged in~~ for gain or profit.
- (4) Corporation. -- Has the same meaning as in G.S. 55-1-40(4).
- (5) Court. -- Includes every court and judge having jurisdiction in the case.
- (6) Distribution. -- A direct or indirect transfer of money or other property or incurrence of indebtedness by a limited liability company to or for the benefit of its members in respect of their membership interests.
- (7) Foreign corporation. -- Has the same meaning as in G.S. 55-1-40(10).
- (8) Foreign limited liability company. -- An unincorporated organization formed under laws other than the laws of this State, that affords to each of its members, pursuant to the laws under which it is formed, limited liability with respect to the liabilities of the organization.
- (9) Foreign limited partnership. -- Has the same meaning as in G.S. 59-102(5).
- (10) Individual. -- A human being.
- (10a) Liabilities, debts, and obligations. -- Have one and the same meaning and are used interchangeably throughout this Chapter. Reference to 'liabilities,' 'debts,' or 'obligations' whether individually or in any combination, is deemed to reference 'all liabilities, debts, and obligations, whether arising in contract, tort, or otherwise.'
- (11) Limited liability company or domestic limited liability company. -- An entity formed and existing under this Chapter.
- (12) Limited partnership or domestic limited partnership. -- Has the same meaning as in G.S. 59-102(8).
- (13) Manager. -- Has the following meanings: (i) with respect to a limited liability company that has set forth in its articles of organization that it is to be or may be managed by persons other than members, any person designated in accordance with G.S. 57C-3-20(a), (ii) with respect to any other limited liability company, its members, and (iii) with respect to a foreign limited liability company, any person authorized to act for and bind the foreign limited liability company.

- (14) Member. -- A person who has been admitted to membership in the limited liability company as provided in G.S. 57C-3-01 until the person's membership ceases as provided in G.S. 57C-3-02 or G.S. 57C-5-02.
- (15) Membership interest or interest. -- All of a member's rights in the limited liability company, including without limitation the member's share of the profits and losses of the limited liability company, the right to receive distributions of the limited liability company assets, any right to vote, and any right to participate in management.
- (16) Operating agreement. -- Any agreement, written or oral, of the members with respect to the affairs of a limited liability company and the conduct of its business that is binding on all the members. An operating agreement shall include, in the case of a limited liability company with only one member, any writing signed by the member, without regard to whether the writing constitutes an agreement, that relates to the affairs of the limited liability company and the conduct of its business.
- (16a) Organizer. -- A person who executes the articles of organization of a limited liability company in the capacity of an organizer.
- (17) Person. -- An individual, a trust, an estate, or a domestic or foreign corporation, a domestic or foreign professional corporation, a domestic or foreign partnership, a domestic or foreign limited liability company, an unincorporated association, or another entity.
- (18) State. -- A state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico."

## PART II. FORMATION.

Section 2.1. G.S. 57C-1-20(f)(3) reads as rewritten:

- "(3) If the limited liability company has not been ~~formed~~, formed or if no initial members of the limited liability company have been identified in the manner provided in this Chapter, by an organizer; or".

Section 2.2. G.S. 57C-2-20 reads as rewritten:

### "§ 57C-2-20. Formation.

- (a) One or more persons may ~~organize~~ form a limited liability company by delivering executed articles of organization to the Secretary of State for filing.
- (b) (1) When the filing by the Secretary of State ~~files~~ of the articles of ~~organization;~~ organization becomes effective, the proposed organization becomes a limited liability company subject to this Chapter and to the purposes, conditions, and provisions stated in the ~~articles, and the persons executing the articles of organization~~

~~become members of the limited liability company. articles of organization.~~

- (2) Filing of the articles of organization by the Secretary of State is conclusive evidence of the ~~organization~~ formation of the limited liability company, except in a proceeding by the State to cancel or revoke the articles of organization or involuntarily dissolve the limited liability company.

(c) If initial members are not identified in the articles of organization of a limited liability company in the manner provided in G.S. 57C-3-01(a), the organizers shall hold one or more meetings at the call of a majority of the organizers to identify the initial members of the limited liability company. Unless otherwise provided in this Chapter or in the articles of organization of the limited liability company, all decisions to be made by the organizers at such meetings shall require the approval, consent, agreement, or ratification of a majority of the organizers. Unless otherwise provided in the articles of organization, the organizers may, in lieu of a meeting, take action as described in this subsection by written consent signed by all of the organizers. The written consent may be incorporated in, or otherwise made part of, the initial written operating agreement of the limited liability company.

(d) A limited liability company may also be formed through the conversion of another business entity in accordance with Part 1 of Article 9 of this Chapter."

Section 2.3. G.S. 57C-2-21(a) reads as rewritten:

"(a) The articles of organization must set forth:

- (1) A name for the limited liability company that satisfies the provisions of G.S. 57C-2-30;
- (2) ~~The latest date on which~~ If the limited liability company is to dissolve, dissolve by a specific date, the latest date on which the limited liability company is to dissolve. If no date for dissolution is specified, there shall be no limit on the duration of the limited liability company;
- (3) The name and address of each person executing the articles of ~~organization;~~ organization and whether the person is executing the articles of organization in the capacity of a member or an organizer;
- (4) The street address, and the mailing address if different from the street address, of the limited liability company's initial registered office, the county in which the initial registered office is located, and the name of the limited liability company's initial registered agent at that address; and
- (5) Unless all of the members by virtue of their status as members shall be managers of the limited liability company, a statement that, except as provided in G.S. 57C-3-20(a), the members shall not be managers by virtue of their status as members."

Section 2.4. G.S. 57C-2-22(b) reads as rewritten:

1     "(b) Unless otherwise provided in the articles of organization or a written  
2 operating agreement, any amendment to the articles of organization shall require the  
3 unanimous vote of the ~~members.~~ members or, if no initial members of the limited  
4 liability company have been identified in the manner provided in this Chapter, by the  
5 unanimous vote of the organizers."

6             Section 2.5. G.S. 57C-2-22.1(b) reads as rewritten:

7     "(b) The restated articles of organization may include one or more amendments to  
8 the ~~articles.~~ articles of organization. Unless otherwise provided in the articles of  
9 organization or a written operating agreement, any amendment requires the  
10 unanimous vote of the ~~members.~~ members or, if no initial members of the limited  
11 liability company have been identified in the manner provided in this Chapter, by the  
12 unanimous vote of the organizers. The restated articles of organization may include a  
13 statement of the address of the current registered office and the name of the current  
14 registered agent of the limited liability company."

15  
16 **PART III. REAL ESTATE RECORDS INDEX.**

17             Section 3. G.S. 57C-2-34 reads as rewritten:

18 **"§ 57C-2-34. Real property records.**

19     (a) Whenever the name of any domestic or foreign limited liability company  
20 holding title to real property in this State is changed upon amendment to its articles  
21 of organization or whenever title to its real property in this State is ~~transferred~~ vested  
22 by operation of law in another entity upon merger or conversion of ~~two or more the~~  
23 ~~limited liability companies;~~ company, a certificate reciting the ~~change or transfer~~  
24 name change, merger, or conversion shall be recorded in the office of the register of  
25 deeds of the county where the property lies, or if the property is located in more than  
26 one county, then in each county where any portion of the property lies.

27     (b) The Secretary of State shall adopt uniform certificates to be furnished for  
28 registration in accordance with this section. In the case of a foreign limited liability  
29 company, a similar certificate by any competent authority of the jurisdiction of  
30 organization may be registered in accordance with this section.

31     (c) The certificate required by this section shall be recorded by the register of  
32 deeds in the same manner as deeds, and for the same fees, but no formalities as to  
33 acknowledgement, probate, or approval by any other officer shall be required. The  
34 former name of the limited liability company holding title to the real property before  
35 the ~~amendment or merger~~ name change, merger, or conversion shall appear in the  
36 'Grantor' index, and the ~~amended~~ new name of the limited liability company or the  
37 name of the other entity holding title to the real property by virtue of the ~~amendment~~  
38 ~~or merger~~ or conversion, as applicable, shall appear in the 'Grantee' index."

39  
40 **PART IV. MEMBERSHIP.**

41             Section 4.1. G.S. 57C-3-01 reads as rewritten:

42 **"§ 57C-3-01. Admission of members.**

43     (a) ~~The persons executing~~ Unless the articles of organization of a limited liability  
44 company ~~become members upon the effective time of filing of the articles of~~



1 ~~organization by the Secretary of State as specified in G.S. 57C-2-20. provide~~  
2 ~~otherwise, each person executing the articles of organization of a limited liability~~  
3 ~~company in the capacity of a member, and each person who is otherwise named in~~  
4 ~~the articles of organization as a member of the limited liability company, becomes a~~  
5 ~~member at the time that the filing by the Secretary of State of the articles of~~  
6 ~~organization of the limited liability company becomes effective.~~

7 (b) ~~After the formation of a limited liability company, a~~ A person may be  
8 admitted as a ~~member.~~ member of a limited liability company:

9 (1) In the case of a person acquiring a membership interest directly  
10 from the limited liability company, (i) upon being so identified by  
11 the organizers of the limited liability company in accordance with  
12 G.S. 57C-2-20(c) or (ii) upon compliance with the articles of  
13 organization or operating agreement or, if the articles of  
14 organization or operating agreement do not so provide, upon the  
15 unanimous consent of the members; and

16 (2) In the case of an assignee of an interest of a member, upon  
17 compliance with the provisions of G.S. 57C-5-04(a)."

18 Section 4.2. G.S. 57C-3-05 reads as rewritten:

19 "**§ 57C-3-05. Members bound by operating agreements.**

20 A member shall be bound by any operating agreement, including any amendment  
21 thereto, otherwise valid under this Chapter and other applicable law, (i) to which the  
22 member has expressly assented, or (ii) which was in effect at the time the member  
23 became a member and either was in writing or the terms of which were actually  
24 known to the member, or (iii) with respect to any amendment, if the member was  
25 bound by the operating agreement as in effect immediately prior to such amendment  
26 and such amendment was adopted in accordance with the terms of such operating  
27 agreement. The articles of organization or written operating agreement may require  
28 that all agreements of the members constituting the operating agreement be in  
29 writing, in which case the term 'operating agreement' shall not include oral  
30 agreements of the members. Except to the extent otherwise provided in a written  
31 operating agreement, a limited liability company shall be deemed for all purposes to  
32 be a party to the operating agreement of its member or members."

33 Section 4.3. G.S. 57C-3-20(b) reads as rewritten:

34 "(b) Except to the extent otherwise provided in the articles of organization or a  
35 written operating agreement, Management management of the affairs of the limited  
36 liability company shall be vested in ~~its~~ the managers. Subject to any provisions in the  
37 articles of organization or a written operating agreement or this Chapter restricting,  
38 enlarging, or modifying the management rights and duties of any manager or  
39 managers, or management procedures, each manager shall have equal rights and  
40 authority to participate in the management of the limited liability company, and  
41 management decisions shall require the approval, consent, agreement, or ratification  
42 of a majority of the managers."

43 Section 4.4. G.S. 57C-3-32(b) reads as rewritten:

1     "(b) No provision permitted under subsection (a) of this section shall limit,  
2 eliminate, or indemnify against the liability of a manager for (i) acts or omissions that  
3 the manager knew at the time of the acts or omissions were clearly in conflict with  
4 the interests of the limited liability company, (ii) any transaction from which the  
5 manager derived an improper personal benefit, or (iii) acts or omissions occurring  
6 prior to the date the provision became effective, except that indemnification pursuant  
7 to subdivision (2) of subsection (a) of this section may be provided if approved by all  
8 the members. As used in this subsection, 'improper personal benefit' does not include  
9 reasonable compensation or other reasonable incidental benefit for or on account of  
10 service as a manager, an officer, an employee, an independent contractor, an  
11 attorney, or a consultant of the limited liability company.

12     ~~No provision permitted under subsection (a) of this section shall limit or eliminate~~  
13 ~~the liability of a member or manager for any taxes owed by the limited liability~~  
14 ~~company under Chapter 105 of the General Statutes or Article 3 of Chapter 119 of~~  
15 ~~the General Statutes."~~

16             Section 4.5. G.S. 57C-5-06 reads as rewritten:

17     **"§ 57C-5-06. Voluntary withdrawal of member.**

18     A member may withdraw only at the time or upon the happening of the events  
19 specified in the articles of organization or a written operating agreement. ~~by giving~~  
20 ~~not less than six months' prior written notice to the other members at their respective~~  
21 ~~addresses as shown on the books of the limited liability company, unless:~~

22             ~~(1) The articles of organization or a written operating agreement~~  
23 ~~provide that the member does not have the right or power to~~  
24 ~~withdraw; or~~

25             ~~(2) The articles of organization or a written operating agreement~~  
26 ~~specify another time for or impose other conditions on~~  
27 ~~withdrawal."~~

28             Section 4.6. G.S. 57C-5-07 reads as rewritten:

29     **"§ 57C-5-07. Distribution upon withdrawal.**

30     Except as provided in and to the extent provided under this Article, Chapter, upon  
31 withdrawal, any withdrawing member is entitled to receive any distribution to which  
32 he is otherwise entitled under the articles of organization or a written operating  
33 agreement, or, if not otherwise provided in the articles of organization or a written  
34 operating agreement, upon a reasonable time after withdrawal, the fair value of the  
35 member's interest in the limited liability company as of the date of withdrawal based  
36 upon the member's right to share in distributions from the limited liability company."

37

38     **PART V. DISSOLUTION.**

39             Section 5.1. G.S. 57C-6-01 reads as rewritten:

40     **"§ 57C-6-01. Dissolution.**

41     A limited liability company is dissolved and its affairs shall be wound up at or  
42 upon the first to occur of the following:

43             (1) The time specified in the articles of organization or a written  
44 operating agreement;

- (2) The happening of an event specified in the articles of organization or a written operating agreement;
- (3) The written consent of all members;
- (4) Unless otherwise provided in the articles of organization or a written operating agreement, at such time that the limited liability company no longer has any members, the happening of any event of withdrawal described in G.S. 57C-3-02 (cessation of membership) with respect to any member, unless at the time of the event of withdrawal (i) there is at least one remaining member, (ii) the provisions of the articles of organization or a written operating agreement permit the business of the limited liability company to be carried on by the remaining member or members, and (iii) the remaining member or members elect to do so pursuant to such vote, to procedures prescribed in the articles of organization or a written operating agreement, or, in the absence of prescribed voting requirements or procedures, by a unanimous vote of the remaining member or members taken after the event of withdrawal. The foregoing notwithstanding, unless otherwise provided in the articles of organization or a written operating agreement, a limited liability company shall not be dissolved and is not required to be wound up by reason of any event of withdrawal of the last remaining member if, within 90 days after the event of withdrawal, the assignee or the fiduciary of the estate of the last remaining member ~~all remaining members agree agrees~~ in writing that the business of the limited liability company may be ~~continued, or~~ continued until the admission of the assignee or the fiduciary of the estate of the member or its designee to the limited liability company as a member, effective as of the occurrence of the event that causes the withdrawal of the last remaining member; or
- (5) Entry of a decree of judicial dissolution under G.S. 57C-6-02, or the filing by the Secretary of State of a certificate of dissolution under G.S. 57C-6-03."

Section 5.2. G.S. 57C-6-02 reads as rewritten:

**"§ 57C-6-02. Judicial Grounds for judicial dissolution.**

~~(a) On application by or for a member, the~~ The superior court may decree dissolution ~~of dissolve~~ a limited liability company ~~whenever it is not reasonably practicable to carry on the business in conformity with the articles of organization or an operating agreement. The clerk of court shall deliver a certified copy of the decree to the Secretary of State, who shall file it.~~ company in a proceeding by the following:

- (1) The Attorney General if it is established that (i) the limited liability company obtained its articles of organization through fraud; or (ii) the limited liability company has, after written notice by the Attorney General given at least 120 days prior thereto,

1 continued to exceed or abuse the authority conferred upon it by  
2 law;

3 (2) A member if it is established that (i) the managers or those in  
4 control of the limited liability company are deadlocked in the  
5 management of the affairs of the limited liability company, the  
6 members are unable to break the deadlock, and irreparable injury  
7 to the limited liability company is threatened or being suffered, or  
8 the business and affairs of the limited liability company can no  
9 longer be conducted to the advantage of the members generally,  
10 because of the deadlock; (ii) liquidation is reasonably necessary for  
11 the protection of the rights or interests of the complaining member,  
12 (iii) the assets of the limited liability company are being misapplied  
13 or wasted; or (iv) the articles of organization or a written operating  
14 agreement entitles the complaining member to dissolution of the  
15 limited liability company; or

16 (3) The limited liability company to have its voluntary dissolution  
17 continued under court supervision.

18 ~~(b) Venue for a proceeding under subsection (a) of this section to dissolve a~~  
19 ~~limited liability company lies in the county where the limited liability company's~~  
20 ~~principal office (or, if none in this State, its registered office) is or was last located."~~

21 Section 5.3. Article 6 of Chapter 57C is amended by adding a new  
22 section to read:

23 **"§ 57C-6-02.1. Procedure for judicial dissolution.**

24 (a) Venue for a proceeding to dissolve a limited liability company lies in the  
25 county where the limited liability company's principal office (or, if none in this State,  
26 its registered office) is or was last located.

27 (b) It is not necessary to join members as parties to a proceeding to dissolve a  
28 limited liability company unless relief is sought against them individually, however  
29 the court shall order that appropriate notice of the dissolution proceeding be given to  
30 all members by the party initiating the proceeding.

31 (c) A court in a proceeding brought to dissolve a limited liability company may  
32 issue injunctions, appoint a receiver with all powers and duties the court directs, take  
33 other action required to preserve the assets of the limited liability company, wherever  
34 located, and carry on the business of the limited liability company.

35 (d) In any proceeding brought by a member under G.S. 57C-6-02(2)(ii) in which  
36 the court determines that dissolution would be appropriate, the court shall not order  
37 dissolution if, after the court's determination, the limited liability company elects to  
38 purchase the membership interest of the complaining member at its fair value, as  
39 determined in accordance with any procedures the court may provide."

40 Section 5.4. Article 6 of Chapter 57C is amended by adding a new  
41 section to read:

42 **"§ 57C-6-02.2. Receivership.**

43 (a) A court in a judicial proceeding brought to dissolve a limited liability  
44 company may appoint one or more receivers to wind up or to manage the business

1 and affairs of the limited liability company. Before appointing a receiver, the court  
2 shall hold a hearing after notifying all parties to the proceeding and any interested  
3 persons designated by the court. The court appointing a receiver has exclusive  
4 jurisdiction over the limited liability company and all of its property, wherever  
5 located.

6 (b) The court may appoint an individual or other person as a receiver. The court  
7 may require the receiver to post bond, with or without sureties, in an amount the  
8 court directs.

9 (c) The court shall describe the powers and duties of the receiver in its appointing  
10 order, which may be amended from time to time. The powers may include the  
11 authority to:

12 (1) Dispose of all or any part of the assets of the limited liability  
13 company wherever located, at a public or private sale, if  
14 authorized by the court;

15 (2) Sue and defend in the receiver's own name as receiver of the  
16 limited liability company in all courts of this State; and

17 (3) Exercise all of the powers of the limited liability company, through  
18 or in place of its managers, to the extent necessary to manage the  
19 affairs of the limited liability company in the best interests of its  
20 members and creditors.

21 (d) From time to time during the receivership, the court may order compensation  
22 paid and expense disbursements or reimbursements made to the receiver and the  
23 receiver's counsel from the assets of the limited liability company or proceeds from  
24 the sale of the assets."

25 Section 5.5. Article 6 of Chapter 57C is amended by adding a new  
26 section to read:

27 **"§ 57C-6-02.3. Decree of dissolution.**

28 (a) If, after a hearing, the court determines that one or more grounds for judicial  
29 dissolution described in G.S. 57C-6-02 exist, it may enter a decree dissolving the  
30 limited liability company and specifying the effective date of the dissolution, and the  
31 clerk of the court shall deliver a certified copy of the decree to the Secretary of State,  
32 who shall file it.

33 (b) After entering the decree of dissolution, the court shall direct the winding up  
34 of the limited liability company's business and affairs in accordance with G.S. 57C-6-  
35 04 and G.S. 57C-6-05 and the notification of claimants in accordance with G.S. 57C-  
36 6-07 and G.S. 57C-6-08."

37  
38 **PART VI. ASSUMED NAME.**

39 Section 6. G.S. 66-68 reads as rewritten:

40 **"§ 66-68. Certificate to be filed; contents; exemption of certain partnerships and**  
41 **limited liability companies engaged in rendering professional services; withdrawal or**  
42 **transfer of assumed name.**

43 (a) Unless exempt under subsection (e) hereof, before any person or partnership  
44 engages in business in any county in this State under an assumed name or under any

1 designation, name or style other than the real name of the owner or owners thereof,  
2 before any limited partnership engaged in business in any county in this State other  
3 than under the name set out in the Certificate filed with the Office of the Secretary  
4 of ~~State~~ State, before any limited liability company engages in business in any county  
5 other than under the name set out in the articles of organization filed with the Office  
6 of the Secretary of State, or before a corporation engages in business in any county  
7 other than under its corporate name, such person, partnership, limited partnership,  
8 limited liability company, or corporation must file in the office of the register of  
9 deeds of such county a certificate giving the following information:

- 10           (1)    The name under which the business is to be conducted; and  
11           (2)    The name and address of the owner, or if there is more than one  
12                   owner, the name and address of each.

13   (b) If the owner is an individual or a partnership, the certificate must be signed  
14 and duly acknowledged by the individual owner, or by each general partner. If the  
15 owner is a ~~corporation~~, corporation or limited liability company, it must be signed in  
16 the name of the corporation or limited liability company and duly acknowledged as  
17 provided by G.S. 47-41.01 or G.S. 47-41.02.

18   (c) Whenever a general partner withdraws from or a new general partner joins a  
19 partnership, a new certificate shall be filed. For limited partnerships, the requirement  
20 of this subsection (c) shall be deemed satisfied if the partnership is identified as the  
21 owner as provided in subsection (a) and the partnership's certificate of limited  
22 partnership is amended as provided in G.S. 59-202.

23   (d) It is not necessary that any person, partnership, limited liability company, or  
24 corporation file such certificate in any county where no place of business is  
25 maintained and where the only business done in such county is the sale of goods by  
26 sample or by traveling agents or by mail.

27   (e) Any partnership or limited liability company engaged in rendering  
28 professional services, as defined in G.S. 55B-2(6), in this State, shall be exempt from  
29 the requirements of this section if it shall file annually with the licensing board  
30 responsible for regulating the rendering of such professional services, or at such  
31 intervals as shall be designated from time to time by such licensing board, a listing of  
32 the names and addresses of its ~~partners~~, partners or members. The listing shall be  
33 open to public inspection during normal working hours.

34   (f) Any person, partnership, limited liability company, or corporation executing  
35 and filing a certificate of assumed name as required by this section may, upon ceasing  
36 to engage in business in this State under the assumed name, withdraw the assumed  
37 name or transfer the assumed name to any other person, partnership, or corporation  
38 by filing in the office of the register of deeds of the county in which the certificate of  
39 assumed name is filed a certificate of withdrawal or a certificate of transfer executed  
40 as provided in subsection (b) of this section and setting forth:

- 41           (1)    The assumed name being withdrawn or transferred;  
42           (2)    The date of filing of the certificate of assumed name;  
43           (3)    The name and address of the owner or owners of the business;

- 1 (4) A statement that such owner or owners have ceased engaging in  
2 business under the assumed name;  
3 (5) If the assumed name is to be withdrawn, the effective date (which  
4 shall be a date certain but not more than 20 days from the date of  
5 filing) of the withdrawal if it is not to be effective upon the filing  
6 of the certificate of withdrawal; and  
7 (6) If the assumed name is to be transferred, the name and address of  
8 the transferee or transferees, and the effective date (which shall be  
9 a date certain but not more than 20 days from the date of filing) of  
10 the transfer if it is not to be effective upon the filing of the  
11 certificate of transfer. This subsection does not relieve a transferee  
12 of the obligation to file a certificate of assumed name as required  
13 by this Article."  
14

15 **PART VII. EFFECTIVE DATE.**

16 Section 7. This act is effective when it becomes law, applies to limited  
17 liability companies in existence or formed on or after January 1, 1999, and applies to  
18 actions commenced on or after October 1, 1999.

## VISITOR REGISTRATION SHEET

## SMALL BUSINESS

Name of Committee

May 26, 1999  
Date

Date \_\_\_\_\_

**VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK**

**NAME****FIRM OR AGENCY AND ADDRESS**[illegible]



**NORTH CAROLINA HOUSE OF REPRESENTATIVES  
COMMITTEE MEETING NOTICE**

You are hereby notified that the Committee on **SMALL BUSINESS** will meet as follows:

**DAY & DATE:**        **Wednesday, June 23, 1999**

**TIME:**                **12:00 noon**

**LOCATION:**          **421 LOB**

The following bills will be considered (Bill # & Short Title):  
**SB785 Regulation of LP Gas - Senator Albertson**

**Presentation by NC State Industrial Extension Service**

Respectfully,

Representative Daniel T. Blue, Jr.  
Chairman

I hereby certify this notice was filed by the committee assistant at the following offices at  
**2:30pm on June 21, 1999.**

\_\_\_\_Principal Clerk  
\_\_\_\_Reading Clerk - House Chamber

Lin Threatt (Committee Assistant)

# **AGENDA**

## **HOUSE COMMITTEE ON SMALL BUSINESS**

**June 23, 1999  
Room 421 LOB**

### **Call to Order**

Rep. Dan Blue

### **Discussion**

SB 785 Regulation of LP Gas – Senator Charlie Albertson

### **Presentation**

NC State Industrial Extension Service

### **Closing Remarks**

Rep. Dan Blue

### **Adjournment**

# HOUSE SMALL BUSINESS COMMITTEE

## Minutes

June 23, 1999

The House Committee on Small Business met on June 23, 1999 in Room 421, Legislative Office Building. The following members were present: Rep. Dan Blue, Chair, Rep. Edith Warren, Vice Chair, Representatives John Bridgeman, Nelson Cole, Stan Fox, William Hiatt, Amelia Morris, Edd Nye, John Rayfield, Mitchell Setzer, Timothy Tallent and Trudi Walend.

Rep. Blue called the meeting to order at 12:05 pm and welcomed the members, pages and visitors. Rep. Blue noted that the committee would hear the presentation first, then proceed with SB 785. Rep. Blue then introduced Mr. Dan Lilly, Director of the NC Manufacturing Extension Partnership with NC State University Extension Service. Mr. Lilly gave a presentation about his program and the services it provides to small businesses across the State.

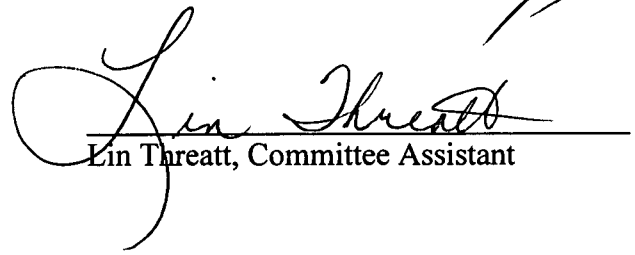
The second order of business was to take up Senate Bill 785 Regulation of LP Gas. Rep. Blue invited Sen. Albertson, bill sponsor, to speak on the bill. Immediately following Sen. Albertson's explanation of the bill, individuals requesting to speak were allowed to make brief remarks. After hearing all remarks, Rep. Blue advised the committee that they should consider some other issues related to the bill, such as equity in the sale of heating sources, and possible health related problems.

Rep. William Hiatt made a motion to send the bill to a subcommittee. Rep. Edd Nye made a motion to give the bill a favorable report and for the committee to put it in a study commission. Rep. Blue then reminded the committee that given the time any vote would be obsolete, and made the motion to take up the bill the following week.

The meeting was adjourned at 1:05pm.



Representative Daniel T. Blue, Jr., Chair



Lin Threath, Committee Assistant

March 2, 1999

## **IES Progress Report on the NC Manufacturing Extension Partnership Program**

Manufacturing firms produce the largest portion (28%, or \$68 billion) of North Carolina's \$240 billion Gross State Product. Manufacturing is not only the *leading employer* of our rural citizens, it also is the *largest employer* in 54 of 85 rural NC counties, and a major employer in most others. Our state's economy, especially its rural economy, depends on keeping our manufacturing firms here and keeping them healthy.

The NC Manufacturing Extension Partnership (NCMEP) provides research-based engineering and management assistance to small manufacturers (<500 employees) throughout North Carolina. Although more than half of our state's manufacturing firms have no engineer on staff, global competition makes it imperative that all North Carolina manufacturers use the latest engineering practices to continuously improve their products and processes. It is equally important for them to have unbiased engineering support derived from a research base, rather than from vendors, industry trainers or technology salespeople. NCMEP engineers carry research-based knowledge onsite to our state's factories to help their managers improve productivity, quality and profitability. Greater profitability supports expansion of employment, increases the tax base, provides greater employment stability and better wages for North Carolina citizens.

Operating as the manufacturing services arm of the Industrial Extension Service of NC State University, the NCMEP connects the research resources of the university, NASA and other knowledge-based partners to all manufacturers in the state, including those in the remotest areas. Regional offices, located at seven strategic university and community college campuses and two Cooperative Extension Service sites, ensure convenient access to services for all manufacturers throughout the state. The NCMEP does not duplicate the services of the community colleges, SBTDC or the NCTDA, but complements these organizations with engineering-based services and expertise they cannot provide. NCMEP staff includes 27 industry-experienced specialists, mostly engineers with graduate degrees. Extension engineers visit manufacturers daily, and may tap university researchers, faculty, graduate students and other partner experts to generate the best solutions for manufacturers' needs, to help them be more competitive.

The NCMEP is part of a national network of manufacturing extension programs established in each state with funding provided by the federal government, the state and private industry. Initially, the federal government provided extra funds to accelerate the startup of MEP programs. The federal program, administered by the National Institute of Standards and Technology (NIST), requires the state, industry and the federal government to provide equal amounts of funding (1/3 each) after six years of state program operation. NIST has allocated \$2,991 million funding for NCMEP in fiscal 1999-2000, which requires \$1.485 million in new state funding to continue at current levels (see Budget table, overleaf.)

## IES – NCMEP Program Budget (\$000)

| Source of Funds                                | Actual   |          |          | Budgeted |          |          |          |
|--|----------|----------|----------|----------|----------|----------|----------|
|  | FY 95-96 | FY 96-97 | FY 97-98 | FY 98-99 | FY 99-00 | FY 00-01 | FY 01-02 |
| Federal* (NIST)                                | 1,429    | 1,745    | 2,230    | 2,883    | 2,991    | 2,740    | 2,545    |
| State  |          |          |          |          |          |          |          |
| IES (incl. \$400M PEP)**                       | 1,020    | 811      | 964      | 1,060    | 1,060    | 1,060    | 1,060    |
| New State Appropriations Requested***          | 79       | 100      | 860      | 900      | 1,485    | 1,485    | 1,485    |
| Total State                                    | 1,099    | 911      | 1,824    | 1,960    | 2,545    | 2,545    | 2,545    |
| Industry (Includes subcontracts with Partners) | 399      | 940      | 1,582    | 1,737    | 1,595    | 2,210    | 2,545    |
| Total Budget                                   | \$2,927  | \$ 3,596 | \$ 5,726 | \$ 6,580 | \$ 7,131 | \$ 7,495 | \$ 7,635 |

\*Federal funding shown is already committed pending provision of state and industry matching funds as shown.

\*\* Existing state recurring appropriations.

\*\*\* New appropriations requested will provide matching state funds

The positive economic impact of the NCMEP program is clear. In its first year, with only about one third of its current professional staff in place, the NCMEP generated \$26 million in annual economic gain (savings and new business) for its client manufacturing firms. In FY 98-99, the economic gain is projected to be more than \$78 million, providing about \$3.8 million in new state tax revenue. In terms of return on investment, this equates to \$1.50 of state tax revenue generated for each state dollar invested. It's just good business for North Carolina to continue funding the NCMEP program.

### Example Services Provided by NC Manufacturing Extension Partnership

#### **Newton Instrument Company, Granville County, 310 Employees**

Newton Instrument Company manufactures components for the telecommunications industry. Capacity and finish quality problems were limiting the company's growth. NCMEP specialist Dr. Joe Davis and Industrial Engineering graduate students conducted video time/motion analysis and simulation of the painting process to identify problems. Recommended automation and design changes improved quality and increased throughput to accommodate \$200,000 more shipments per week. Newton's Director of Quality said, "We are extremely pleased with the recommendations provided...NCMEP conducted the study in a professional manner...all employees recognize the financial and pride in workmanship benefits that come with process improvements such as those gained through the help of NCMEP."

#### **Process Systems Company, Mecklenburg County, 135 Employees**

This company designs and manufactures electronic instruments. One of its products was experiencing electrical continuity failures. The local NCMEP specialist engaged partner resources to develop a solution utilizing ultrasonic welding. The new technique eliminated an outsourced process and will save the company an estimated \$120,000 to \$150,000 annually. President John Shumar stated the company did not have the metallurgical engineering expertise that NCMEP provided.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 785

Short Title: Regulation of LP Gas.

(Public)

Sponsors: Senators Albertson; Clodfelter, Cooper, Dannelly, Horton, Hoyle, Kerr, Martin of Pitt, Martin of Guilford, Perdue, and Warren.

Referred to: Commerce.

April 7, 1999

1 A BILL TO BE ENTITLED  
2 AN ACT TO AMEND THE LAW REGARDING THE INSPECTION AND  
3 REGULATION OF LIQUEFIED PETROLEUM GASES.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 119-58 reads as rewritten:

6 "§ 119-58. Unlawful acts.

7 (a) It shall be an unlawful act for any person to:

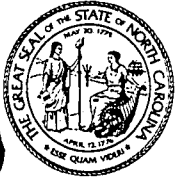
- 8 (1) Sell any liquefied petroleum gas burning appliance designed or  
9 built for domestic use ~~which~~ that has not been approved by the  
10 American Gas Association, Inc., the Underwriters Laboratory, Inc.,  
11 or other laboratory approved by the ~~Commissioner of Agriculture;~~  
12 Building Code Council.
- 13 (2) ~~Install any unvented space heating appliance in a manufactured~~  
14 ~~home as defined in G.S. 143-145(7);~~
- 15 (3) ~~Install any unvented space heating appliance in a sleeping room~~  
16 ~~that has an input of over 30 BTU per cubic foot of enclosure;~~
- 17 (4) Fill a consumer tank or container in excess of 85 percent (85%) of  
18 its water capacity, or to fill a tank or container on the premises of  
19 a consumer that is not equipped with a fill tube or gauge;  
20 provided, ~~said~~ the tank or container may be filled by weight if the  
21 tank or container is weighed before and after ~~filling;~~ filling.
- 22 (5) Disconnect an appliance from a gas supply line without capping or  
23 plugging ~~said~~ the line before leaving the ~~premises;~~ premises.

(6) Turn on the gas after reestablishing an interrupted service without first having checked and closed all gas ~~outlets;~~ outlets.

(7) Violate any provisions of this Article or any rules ~~and regulations promulgated thereunder.~~ adopted pursuant to this Article.

(b) Every supply tank or container with its regulating equipment connected in a service system, shall be identified while in service by the supplier with an attached tag, ~~label~~ label, or other marking that includes the name of the person supplying liquefied petroleum gas to ~~said~~ the system, and it shall be unlawful for any person, other than ~~said~~ the supplier or the owner of the system, to disconnect, interrupt or fill ~~said~~ the system with liquefied petroleum gas without the consent of ~~said~~ the supplier. ~~Provided, if~~ If another registered supplier is requested by the consumer to connect ~~his~~ service and is given permission by the consumer to do so, the new supplier shall notify the former supplier before disconnecting the former service and connecting the new service and shall cap or plug all disconnected equipment outlets and leave ~~said~~ the equipment in a condition consistent with this Article and the rules ~~and regulations promulgated thereunder.~~ adopted pursuant to this Article."

Section 2. This act is effective when it becomes law and applies to liquefied petroleum gas burning appliances installed on and after that date.



BILL ANALYSIS

## SENATE BILL 785: Regulation of LP Gas

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|                   |                      |                       |                   |
|-------------------|----------------------|-----------------------|-------------------|
| <b>Committee:</b> | House Small Business | <b>Introduced by:</b> | Senator Albertson |
| <b>Date:</b>      | June 23, 1999        | <b>Summary by:</b>    | Rick Zechini      |
| <b>Version:</b>   | First Edition        |                       | Committee Counsel |

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**SUMMARY:** *Senate Bill 785 repeals the prohibition against installing unvented liquefied petroleum space heating appliances in a manufactured home and repeals the restriction on the size of unvented liquefied petroleum space heating appliances that may be installed in sleeping rooms of any type of structure. Senate Bill 785 also shifts the regulatory authority for approving liquefied petroleum burning appliances designed for domestic use from the Commissioner of Agriculture to the Building Code Council. Because the current State Building Code prohibits the installation of unvented space heating appliances in bedrooms, the effect of the bill is to allow the installation of unvented liquefied petroleum space heating appliances in manufactured homes.*

**CURRENT LAW:** Both the State Building Code and the liquefied petroleum gases statutes regulate liquefied petroleum space heating appliances. The liquefied petroleum gases statutes prohibit the installation of unvented liquefied petroleum space heating appliances in a manufactured home (mobile home) and restrict the size of an unvented liquefied petroleum space heating appliance that may be installed in sleeping rooms of any type of structure. The State Building Code currently prohibits the installation of unvented space heating appliances in bedrooms of any residential building. The Code does allow the installation of unvented heaters in manufactured homes as long as the heaters are approved by a testing laboratory for installation in manufactured homes, labeled for installation in manufactured homes, and installed in strict accordance with the conditions for which it was approved by a testing laboratory and the manufacturer's instructions. Thus, in North Carolina unvented liquefied petroleum space heating appliances may not be installed in bedrooms of any residential building and the only type of unvented space heating appliances that may be installed in manufactured homes are non-liquefied petroleum space heating appliances.

**BILL ANALYSIS:** **Senate Bill 785** repeals the prohibition against installing unvented liquefied petroleum space heating appliances in a manufactured home. In addition, **Senate Bill 785** repeals the prohibition against installing in a sleeping room of any building an unvented liquefied petroleum space heating appliance that has an input of over 30 BTUs per cubic foot of enclosure. Because the current State Building Code prohibits the installation of unvented space heating appliances in bedrooms, the effect of the bill is to allow the installation of unvented liquefied petroleum space heating appliances in manufactured homes.

**Senate Bill 785** also shifts the regulatory authority for approving liquefied petroleum burning appliances designed for domestic use from the Commissioner of Agriculture to the Building Code Council, the organization responsible for adopting the State Building Code.



## INDOOR UNVENTED COMBUSTION APPLIANCES

- Recent peer-reviewed epidemiologic studies have identified higher rates of asthma symptoms, upper respiratory infections, and other respiratory health effects in people that use unvented combustion appliances indoors.
- Indoor air contamination is a key risk factor for onset of the asthma and triggering of asthma attacks.
- Asthma prevalence rates, hospitalization rates, and death rates have all seen enormous increases in the past twenty years.
- Asthma is the most prevalent chronic childhood disease, and is the leading cause of school absenteeism caused by chronic illness.
- A pilot asthma prevalence study of eighth graders conducted last year by DHHS and the UNC School of Public Health found that 29% of those surveyed had signs of the disease.
- DHHS has made control of the asthma epidemic a top priority. Environmental intervention is one of four strategies for addressing the epidemic. The others are medical intervention, surveillance, and education.
- Unvented space heaters can release carbon monoxide (CO) at concentrations that will not cause residential CO alarms to sound but which can cause symptoms and illness. Sensitive populations include those with respiratory illness, heart disease and pregnant women. CO can be generated in by appliances that employ oxygen depletion sensors.
- Unvented combustion appliances cause the release oxides of nitrogen, water vapor, hydrocarbons, and particulates into the indoor environment.
- Oxides of nitrogen are respiratory irritants that are generated during any high temperature combustion process.
- Water vapor is a product of the combustion process. High levels of water vapor indoors, which can result from the use of unvented space heaters, can encourage the proliferation of mold and dust mites indoors. Mold and dust mite allergen indoors are important asthma triggers (trigger asthma attacks).

William Service  
NC DHHS  
Occupational and Environmental Epidemiology Branch  
May 21, 1999



## Project Summary

### Manufactured Housing Fuel Switching Field Test Study

*Fuel switching is defined as any use of non-electric heaters to supplement factory installed, electric space heating in manufactured homes.*

Heaters like gas logs and portable kerosene heaters, particularly vent-free models, have been shown to increase air pollutant and moisture levels in homes. A number of government and industry studies have examined this problem in the laboratory and other settings. Most home manufacturers advise against using unvented heaters. However, the practice continues; furthermore, the effect of using gas logs – which may or may not have venting capability – was until now unknown.

The lack of relevant research prompted the National Manufactured Housing Alliance to conduct an investigation to measure the air pollutant levels created by these types of heaters in manufactured homes. ADM Associates, a national energy survey and engineering firm, conducted the recruitment and testing of homes. The project scientist was Greg Traynor of T. Marshall Associates, a nationally recognized expert in combustion indoor air pollution.

This study focused on determining the concentration levels at the test homes for three gases that are major contributors to poor indoor air quality: carbon monoxide (CO), carbon dioxide (CO<sub>2</sub>), and nitrogen dioxide (NO<sub>2</sub>). A standardized test protocol was used to collect measured data at all sites. The heaters were turned on for a period of one to two hours. The three pollutants, along with air temperature and humidity levels, were measured continuously before, during and after the test. By the end of the test period, 48% of the homes (10 of 21) had achieved measured pollutant strengths that exceeded one or more recognized air quality guideline limits.

**Table 1. Number of homes that exceeded pollutant levels during testing**

| Pollutant        | Total # of Homes | Exposure Limit | Reference Agency                              |
|------------------|------------------|----------------|---|
| Carbon Monoxide  | 6                | 9 ppm          | Environmental Protection Agency               |
| Carbon Dioxide   | 4                | 5000 ppm       | Occupational Safety and Health Administration |
| Nitrogen Dioxide | 1                | 0.25 ppm       | California Air Resources Board                |

The testing took place in North Carolina and Tennessee in March through April of 1998. About 1,500 homeowners were contacted and a sample of 21 single and double section homes (primarily built after the 1994 HUD standards) qualified for testing. In the test group, five homes had vented gas logs, two had vent-free gas logs, 12 had portable kerosene heaters and two had vented wood fireplaces.

In addition to measured values, the data were analyzed to predict exposures for extended periods of heater operation at the end of three time periods: 4, 8, and 24 hours. The modeling assumed that the heaters were operated 50% and 100% of the time. The analysis for eight hours predicted that 57% of the homes (12 of 21) could achieve pollutants strengths that would exceed recognized air quality guidelines.

## **I. Main Findings**

### **1. Supplemental fuel heaters increase indoor air pollutant levels in manufactured homes**

The results of this study showed that operation of an alternative fuel heater (i.e., an unvented or partially-vented combustion appliance) does increase indoor pollutant concentrations of carbon monoxide (CO), carbon dioxide (CO<sub>2</sub>), nitrogen dioxide (NO<sub>2</sub>), and water vapor. The amount of pollutant increase depends on many factors, including the degree of venting, the type of appliance, the burning conditions of the appliance, the fuel type, the building volume, the building air infiltration rate, and the appliance usage pattern.

### **2. Typical and extreme levels of pollutants produced by fuel switching heaters**

- Typical indoor CO levels ranged from 2 to 21 parts per million (ppm) for homes with kerosene heaters and 2 to 40 ppm for homes with propane heaters. Projected (assumed, qualitative) worst-case scenarios yielded indoor CO concentration ranges of 3 to 57 ppm for homes with kerosene heaters and 1 to 80 ppm for homes with propane heaters.
- Typical indoor CO<sub>2</sub> levels ranged from 1900 to 6760 ppm for homes with kerosene heaters and 1990 to 6000 ppm for homes with propane heaters. Projected (assumed, qualitative) worst-case scenarios yielded indoor CO<sub>2</sub> concentration ranges of 2270 to 13800 ppm for homes with kerosene heaters and 2080 to 11900 ppm for homes with propane heaters.
- Typical indoor NO<sub>2</sub> levels ranged from 0.012 to 0.098 ppm for homes with kerosene heaters and 0.022 to 0.277 ppm for homes with propane heaters. Worst-case scenarios yielded values at or below those measured under "typical" conditions.

### **3. Measured pollutant levels can be harmful**

Homeowners who regularly use alternative fuel heaters are exposed to ongoing low to high levels of CO, CO<sub>2</sub> and NO<sub>2</sub>. Users of backup heaters can be exposed to accumulating levels of gases over several days during power outages due to winter storms.

Based on comparison to published air quality guidelines, many of the homes in this study had CO and/or CO<sub>2</sub> levels that could be harmful to selected populations. Using actual peak measurements assumed to be typical, indoor CO levels reached concentrations in some homes that could increase the onset of angina and cause low-birth weights for pregnant women. Many elevated CO<sub>2</sub> concentrations were above the U.S. Occupational Safety and Health Administration's (OSHA's) guideline for a healthy workforce. Sensitive populations could experience a lightheaded sensation and increased breathing rates at the levels observed.

Indoor NO<sub>2</sub> levels observed did not appear to pose a health threat to the occupants, based on comparison to appropriate guidelines. This finding needs to be confirmed with additional studies especially to confirm the high reactivity rates found in these manufactured homes.

### **4. No evidence of moisture damage found**

Indoor relative humidity levels were uniformly low during all tests. Unless condensation actually occurs on a regular basis, the growth of biological contaminants will be minimal as will the deterioration of building materials. There was no evidence in this study that would imply that alternative fuel heaters cause the deterioration of building materials.

**5. Similar results obtained for liquid propane gas and kerosene heaters**

The indoor pollutant levels caused by unvented kerosene and propane space heaters were remarkably similar in the homes studied. Two homes with vented fireplaces, when operated in the proper vented mode, showed much lower CO, CO<sub>2</sub> and NO<sub>2</sub> concentrations than the homes with unvented kerosene and propane heaters and only showed trace amounts of CO. Assuming the indoor particle emissions (not measured) from the fireplaces were minimal, vented fireplaces appear to result in lower overall indoor pollutant levels than unvented kerosene and propane heaters.

**II. Additional Findings**

**1. Do vent-free heaters comply with emission rate standards?**

Two test homes used liquid propane gas (LPG), vent-free gas logs. These heaters fall under the American National Standards Institute (ANSI) emission rate standard. The standard requires that the emission increase in CO concentration should be no more than 1.7 ppm for every 1000 ppm increase in CO<sub>2</sub>. In addition to the two vent-free gas logs, the 17 remaining LPG and kerosene heaters that were tested were compared to see if they would meet the standard if it applied.

The percentages of appliances that were not in ANSI compliance were significant: 58% (7 of 12) for kerosene heaters and 57% (4 of 7) for LPG heaters. Of the 11 non-compliant heaters, eight were responsible for CO concentrations greater than nine ppm in the above worst-case scenario. Of the two vent-free models, one LPG heater exceeded the standard by four times while the second LPG heater met the standard.

**2. Low air infiltration homes increase risk**

Manufacturers routinely build tight homes and control air exchange with the outdoors through the use of whole house ventilation systems, which are mandated by HUD. The ventilation rates achieved by these systems are generally not designed to rid the home of pollutants generated by supplementary fuel heaters. Higher ventilation rates, which would result in greater heating and cooling loads, are not the answer. The solution must address the major reason homeowners purchase supplementary heating systems in the first place, the desire to reduce energy costs. A far more cost effective and health conscious purchase is a high efficiency heating system sold with the home, such as a heat pump.

**3. Recommendations for safe operation of vented gas logs**

The least polluting fuel switching heater is gas logs added into a factory installed fireplace. This type of fireplace has a ventilated chimney and an outdoor combustion air make up source. Occupants should always operate this type of heater with the chimney damper in the open position. Unfortunately all five of the homeowners in the study normally operate their vented fireplace gas logs with the damper closed to "get more heat out of the gas logs". Given this situation two installation precautions are strongly warranted: 1) At a minimum, ANSI rated vent-free gas logs should be installed in these fireplaces. 2) The fail safe recommendation is for the installer to remove or weld open the fireplace damper to prevent the occupants from closing the damper.

**III. Conclusion**

This preliminary study clearly indicates that consumer health and safety could be at risk when homeowners modify the manufacturers designed heating strategy. These initial findings have important implications for home manufacturers who should: (1) continue to warn consumers about the dangers of supplemental heaters, and (2) determine the extent of similar occurrences in their homes.

## VISITOR REGISTRATION SHEET

## SMALL BUSINESS

6-23, 1999

Name of Committee

Date \_\_\_\_\_

**VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK**

NAME \_\_\_\_\_

**FIRM OR AGENCY AND ADDRESS**[illegible]

**NORTH CAROLINA HOUSE OF REPRESENTATIVES  
COMMITTEE MEETING NOTICE**

You are hereby notified that the Committee on **SMALL BUSINESS** will meet as follows:

**DAY & DATE:**        **Wednesday, July 7, 1999**

**TIME:**                **12:00 noon**

**LOCATION:**          **421 LOB**

The following bills will be considered (Bill # & Short Title):  
**SB 785 Regulation of LP Gas**

**HB 1277 Pharmacy Choice/Competition**

Respectfully,

Representative Daniel T. Blue, Jr.  
Chairman

I hereby certify this notice was filed by the committee assistant at the following offices at  
**11:45 am on July 2, 1999.**

\_\_\_\_Principal Clerk  
\_\_\_\_Reading Clerk - House Chamber

Lin Threatt (Committee Assistant)

**AGENDA**

**HOUSE COMMITTEE ON SMALL BUSINESS**

**July 7, 1999**  
**Room 421 LOB**

**Call to Order**

Rep. Dan Blue

**Bills to be Considered**

SB 785 Regulation of LP Gas – Sen. Charlie Albertson

HB 1277 Pharmacy Choice/Competition – Rep. Nelson Cole

**Closing Remarks**

Rep. Dan Blue

**Adjournment**

# HOUSE SMALL BUSINESS COMMITTEE

## Minutes

July 7, 1999

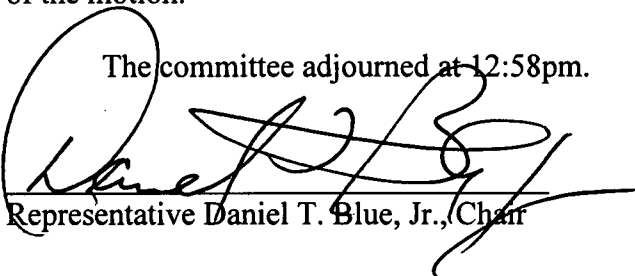
The House Committee on Small Business met on July 7, 1999 in Room 421, Legislative Office Building. The following members were present: Rep. Dan Blue, Chair, Rep. Edith Warren, Vice Chair, Representatives Gordon Allen, John Bridgeman, Nelson Cole, Stan Fox, William Hiatt, Amelia Morris, Edd Nye, Warren Oldham, John Rayfield, Mitchell Setzer, Timothy Tallent and Trudi Walend.

Rep. Blue called the meeting to order at 12:00 noon and welcomed the members, pages, and visitors. Senate Bill 785 Regulation of LP Gas, and HB 1277 Pharmacy Choice/Competition was before the committee.

Rep. Blue stated that the first bill to be considered was SB 785. Rep. Blue then moved for the adoption of the proposed committee substitute. It passed unanimously. Sen. Albertson was asked if he had any comments on the proposed committee substitute. Sen. Albertson stated that he fully supported it. Rep. Blue then invited others to come up and speak before the committee on the bill. Rep. Blue then asked what was the pleasure of the committee. Rep. Nye made the motion that the committee substitute be given a favorable report and the original bill be given an unfavorable report. Rep. Blue then moved that the committee substitute be rolled in and amended to include modular homes. The committee voted unanimously in favor of the motion.

The next bill to be considered was HB 1277 Pharmacy Choice/Competition . Rep. Blue moved for the adoption of the committee substitute for HB 1277. It passed unanimously. Rep. Blue then asked Rep. Cole, sponsor, to make brief remarks concerning the bill. Immediately following, others were invited to speak. After a lengthy discussion from the visitors Rep. Blue asked what was the pleasure of the committee. Rep. Cole moved that the committee substitute be given a favorable report and the original bill be given an unfavorable report. The committee voted unanimously in favor of the motion.

The committee adjourned at 12:58pm.



Representative Daniel T. Blue, Jr., Chair

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Lin Threatt, Committee Assistant



**1999 COMMITTEE REPORT  
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Daniel T. Blue, Jr.** for the Committee on **Small Business.**

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☐ Committee Substitute for

S.B. 785 A BILL TO BE ENTITLED AN ACT TO AMEND THE LAW REGARDING  
THE INSPECTION AND REGULATION OF LIQUEFIED PETROLEUM GASES.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on  
Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the  
Committee on Appropriations ☐ Finance ☐ ☐.

☒ With a favorable report as to <sup>House</sup> committee substitute bill ~~(Committee Substitute Bill # )~~, ☒ which changes the title,  
unfavorable as to ~~(original bill)~~ ~~(Committee Substitute Bill # )~~, ~~(and recommendation~~  
~~that the committee substitute bill # ) be re-referred to the Committee on~~ .)

☐ With a favorable report as to House committee substitute bill (# ), ☐ which changes  
the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/24/99



## BILL ANALYSIS

# SENATE BILL 785: Regulation of LP Gas

**Committee:** House Small Business  
**Date:** July 7, 1999  
**Version:** Proposed Committee  
Substitute

**Introduced by:** Senator Albertson  
**Summary by:** Rick Zechini  
Committee Counsel

**SUMMARY:** *Senate Bill 785 repeals the prohibition against installing unvented liquefied petroleum space heating appliances in a manufactured home and repeals the restriction on the size of unvented liquefied petroleum space heating appliances that may be installed in sleeping rooms of any type of structure. Senate Bill 785 also shifts the regulatory authority for approving liquefied petroleum burning appliances designed for domestic use from the Commissioner of Agriculture to the Building Code Council. Because the current State Building Code prohibits the installation of unvented space heating appliances in bedrooms, the effect of the bill is to allow the installation of unvented liquefied petroleum space heating appliances in manufactured homes. The bill also directs the Legislative Research Commission to study the advisability of allowing the installation of unvented gas burning heating appliances in manufactured and modular homes.*

**CURRENT LAW:** Both the State Building Code and the liquefied petroleum gases statutes regulate liquefied petroleum space heating appliances. The liquefied petroleum gases statutes prohibit the installation of unvented liquefied petroleum space heating appliances in a manufactured home (mobile home) and restrict the size of an unvented liquefied petroleum space heating appliance that may be installed in sleeping rooms of any type of structure. The State Building Code currently prohibits the installation of unvented space heating appliances in bedrooms of any residential building. The Code does allow the installation of unvented heaters in manufactured homes as long as the heaters are approved by a testing laboratory for installation in manufactured homes, labeled for installation in manufactured homes, and installed in strict accordance with the conditions for which it was approved by a testing laboratory and the manufacturer's instructions. Thus, in North Carolina unvented liquefied petroleum space heating appliances may not be installed in bedrooms of any residential building and the only type of unvented space heating appliances that may be installed in manufactured homes are non-liquefied petroleum space heating appliances.

**BILL ANALYSIS:** **Senate Bill 785** repeals the prohibition against installing unvented liquefied petroleum space heating appliances in a manufactured home. In addition, **Senate Bill 785** repeals the prohibition against installing in a sleeping room of any building an unvented liquefied petroleum space heating appliance that has an input of over 30 BTUs per cubic foot of enclosure. Because the current State Building Code prohibits the installation of unvented space heating appliances in bedrooms, the effect of the bill is to allow the installation of unvented liquefied petroleum space heating appliances in manufactured homes.

**Senate Bill 785** also shifts the regulatory authority for approving liquefied petroleum burning appliances designed for domestic use from the Commissioner of Agriculture to the Building Code Council, the organization responsible for adopting the State Building Code. **Senate Bill 785** also directs the Legislative Research Commission to study the advisability of allowing the installation of unvented gas burning heating appliances in manufactured and modular homes.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 785  
Proposed House Committee Substitute S785-PCS1781-SG

Short Title: Regulation of LP Gas.

(Public)

Sponsors:

Referred to:

April 7, 1999

1 A BILL TO BE ENTITLED  
2 AN ACT TO AMEND THE LAW REGARDING THE INSPECTION AND  
3 REGULATION OF LIQUEFIED PETROLEUM GASES AND TO DIRECT THE  
4 LEGISLATIVE RESEARCH COMMISSION TO STUDY THE ADVISABILITY  
5 OF ALLOWING THE INSTALLATION OF UNVENTED GAS BURNING  
6 HEATING APPLIANCES IN MANUFACTURED AND MODULAR HOMES.

7 The General Assembly of North Carolina enacts:

8 Section 1. G.S. 119-58 reads as rewritten:

9 "§ 119-58. Unlawful acts.

10 (a) It shall be an unlawful act for any person to:

- 11 (1) Sell any liquefied petroleum gas burning appliance designed or  
12 built for domestic use ~~which~~ that has not been approved by the  
13 American Gas Association, Inc., the Underwriters Laboratory, Inc.,  
14 or other laboratory approved by the ~~Commissioner of Agriculture;~~  
15 Building Code Council.  
16 (2) ~~Install any unvented space heating appliance in a manufactured~~  
17 ~~home as defined in G.S. 143-145(7);~~  
18 (3) ~~Install any unvented space heating appliance in a sleeping room~~  
19 ~~that has an input of over 30 BTU per cubic feet of enclosure;~~  
20 (4) Fill a consumer tank or container in excess of 85 percent (85%) of  
21 its water capacity, or to fill a tank or container on the premises of  
22 a consumer that is not equipped with a fill tube or gauge;

provided, ~~said the~~ tank or container may be filled by weight if the tank or container is weighed before and after ~~filling~~, filling.

(5) Disconnect an appliance from a gas supply line without capping or plugging ~~said the~~ line before leaving the ~~premises~~, premises.

(6) Turn on the gas after reestablishing an interrupted service without first having checked and closed all gas ~~outlets~~, outlets.

(7) Violate any provisions of this Article or any rules ~~and regulations promulgated thereunder~~, adopted pursuant to this Article.

(b) Every supply tank or container with its regulating equipment connected in a service system, shall be identified while in service by the supplier with an attached tag, ~~label~~ label, or other marking that includes the name of the person supplying liquefied petroleum gas to ~~said the~~ system, and it shall be unlawful for any person, other than ~~said the~~ supplier or the owner of the system, to disconnect, interrupt or fill ~~said the~~ system with liquefied petroleum gas without the consent of ~~said the~~ supplier. ~~Provided, if~~ If another registered supplier is requested by the consumer to connect ~~his~~ service and is given permission by the consumer to do so, the new supplier shall notify the former supplier before disconnecting the former service and connecting the new service and shall cap or plug all disconnected equipment outlets and leave ~~said the~~ equipment in a condition consistent with this Article and the rules ~~and regulations promulgated thereunder~~, adopted pursuant to this Article."

Section 2. The Legislative Research Commission shall study the advisability of allowing the installation of unvented gas burning heating appliances in manufactured and modular homes. The study shall investigate the potential health and safety problems posed to the occupants of manufactured and modular homes in which unvented gas heaters have been installed. In conducting its study, the Legislative Research Commission shall consult with the Building Code Council, the Manufactured Housing Division of the Department of Insurance, the Engineering Division of the Department of Insurance, and the Department of Health and Human Services. The Legislative Research Commission may make an interim report of its findings to the 2000 Regular Session of the 1999 General Assembly and shall make a final report to the 2001 General Assembly.

Section 3. This act is effective when it becomes law and applies to liquefied petroleum gas burning appliances installed on and after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 1999

SESSION LAW 1999-344  
SENATE BILL 785

AN ACT TO AMEND THE LAW REGARDING THE INSPECTION AND  
REGULATION OF LIQUEFIED PETROLEUM GASES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 119-58 reads as rewritten:

"§ 119-58. Unlawful acts.

(a) It shall be an unlawful act for any person to:

- (1) Sell any liquefied petroleum gas burning appliance designed or built for domestic use ~~which~~ that has not been approved by the American Gas Association, Inc., the Underwriters Laboratory, Inc., or other laboratory approved by the ~~Commissioner of Agriculture;~~ Building Code Council.
- (2) ~~Install any unvented space heating appliance in a manufactured home as defined in G.S. 143-145(7);~~
- (3) ~~Install any unvented space heating appliance in a sleeping room that has an input of over 30 BTU per cubic feet of enclosure;~~
- (4) Fill a consumer tank or container in excess of 85 percent (85%) of its water capacity, or to fill a tank or container on the premises of a consumer that is not equipped with a fill tube or gauge; provided, ~~said~~ the tank or container may be filled by weight if the tank or container is weighed before and after ~~filling;~~ filling.
- (5) Disconnect an appliance from a gas supply line without capping or plugging ~~said~~ the line before leaving the ~~premises;~~ premises.
- (6) Turn on the gas after reestablishing an interrupted service without first having checked and closed all gas ~~outlets;~~ outlets.
- (7) Violate any provisions of this Article or any rules ~~and regulations promulgated thereunder.~~ adopted pursuant to this Article.

(b) Every supply tank or container with its regulating equipment connected in a service system, shall be identified while in service by the supplier with an attached tag, ~~label~~ label, or other marking that includes the name of the person supplying liquefied petroleum gas to ~~said~~ the system, and it shall be unlawful for any person, other than ~~said~~ the supplier or the owner of the system, to disconnect, interrupt or fill ~~said~~ the system with liquefied petroleum gas without the consent of ~~said~~ the supplier. ~~Provided, if~~ If another registered supplier is requested by the consumer to connect ~~his~~ service and is given permission by the consumer to do so, the new supplier shall notify the former supplier before disconnecting the former service and connecting the new service and shall cap or plug all disconnected equipment outlets and leave ~~said~~ the equipment in a condition consistent with this Article and the rules ~~and regulations promulgated thereunder.~~ adopted pursuant to this Article."

Section 2. This act is effective when it becomes law and applies to liquefied petroleum gas burning appliances installed on and after that date.  
In the General Assembly read three times and ratified this the 14th day of July, 1999.

s/ Dennis A. Wicker  
President of the Senate

s/ James B. Black  
Speaker of the House of Representatives

s/ James B. Hunt, Jr.  
Governor

Approved 8:45 p.m. this 22nd day of July, 1999

**1999 COMMITTEE REPORT  
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Daniel T. Blue, Jr.** for the Committee on **Small Business**.

☒ Committee Substitute for

H.B. 1277 A BILL TO BE ENTITLED AN ACT TO PROMOTE COMPETITION, CHOICE, AND AVAILABILITY IN THE PURCHASE OF PRESCRIPTION DRUGS AND PHARMACY SERVICES, AND TO APPROPRIATE FUNDS TO THE DEPARTMENT OF INSURANCE TO MONITOR THE EFFECTS OF THIS ACT ON COVERED INDIVIDUALS.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐.

☒ With a favorable report as to committee substitute bill (# 2), ☒ which changes the title, unfavorable as to (original bill) (Committee Substitute Bill # 1), (and recommendation that the committee substitute bill #       ) be re-referred to the Committee on       .)

☐ With a favorable report as to House committee substitute bill (#       ), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/24/99



# HOUSE BILL 1277: Pharmacy Choice/Competition

## BILL ANALYSIS

**Committee:** House Small Business  
**Date:** July 7, 1999  
**Version:** Proposed Committee Substitute

**Introduced by:** Representative Cole  
**Summary by:** Rick Zechini  
Committee Counsel

**SUMMARY:** *House Bill 1277 allows a person who has a prescription card benefit to redeem the prescription card benefit at any pharmacy in the State willing to redeem the prescription card benefit irrespective of whether the pharmacy has entered into a pharmacy provider contract with the insurer or administrator providing the prescription card benefit.*

**CURRENT LAW:** A person wishing to redeem a prescription card benefit at a pharmacy that has not entered into a pharmacy provider contract with the insurer or administrator providing the prescription card benefit must pay for the entire cost of filling the prescription.

**BILL ANALYSIS:** House Bill 1277 allows a person who has a prescription card benefit to redeem the prescription card benefit at any pharmacy in the State willing to redeem the prescription card benefit irrespective of whether the pharmacy has entered into a pharmacy provider contract with the insurer or administrator providing the prescription card benefit. The bill does not apply to Medicaid and Medicare prescription drugs and pharmacy services benefits or the Teachers' and State Employees' Comprehensive Major Medical Plan.

A prescription card benefit is defined as a benefit for prescription drugs and related pharmacy services evidenced by a prescription benefit card that is redeemed and processed by a pharmacy at the time the prescription is filled through electronic transmission to the insurer or third-party administrator. The person redeeming the prescription card benefit is required to pay a co-payment predetermined by the insurer or third-party administrator.

House Bill 1277 provides that a pharmacy that is not a party to a pharmacy provider contract (non-contract pharmacy) may establish its own price for the prescription not to exceed the published average wholesale price plus five percent (5%). An insurer or administrator is required to reimburse a non-contract pharmacy at the same rate as a pharmacy that is a party to a pharmacy provider contract (contract pharmacy). A person redeeming a prescription card benefit at a non-contract pharmacy is responsible for paying the difference between the prescription card benefit and the cost of filling the prescription charged by the non-contract pharmacy. A non-contract pharmacy is required "at the earliest practical time, before filling the prescription and if the information is available," to notify the beneficiary redeeming the prescription card benefit of any difference between the sum of the prescription card benefit and co-payment and the price charged by the non-contract pharmacy. In addition, a non-contract pharmacy must post a notice that is clearly visible and informs customers that the pharmacy's price or charge for the prescription and pharmacy services may exceed the copayment. House Bill 1277 provides that an insurer or administrator may not restrict or coerce a beneficiary's choice of pharmacy and must inform beneficiaries of their option to redeem their prescription card benefits at non-contract pharmacies.

House Bill 1277 directs that of the funds appropriated to the Department of Insurance for the 1999-2000 fiscal year, the sum of \$5,000 shall be used to monitor the effects of this act on persons whose health



# HOUSE BILL 1277

*Page 2*

insurance coverage provides prescription card benefits. The bill is effective when it becomes law and expires September 30, 2003.

**BACKGROUND:** G.S. 58-51-37 requires any entity providing a health plan that includes prescription drug benefits from contract pharmacies to offer all pharmacies in the geographic coverage area of the plan an opportunity to participate in the plan.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 1277

Committee Substitute Reported Without Prejudice 4/29/99

Committee Substitute #2 Favorable 7/7/99

Short Title: Pharmacy Choice/Competition.

(Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO PROMOTE COMPETITION, CHOICE, AND AVAILABILITY IN  
THE PURCHASE OF PRESCRIPTION DRUGS AND PHARMACY SERVICES,  
AND TO APPROPRIATE FUNDS TO THE DEPARTMENT OF INSURANCE  
TO MONITOR THE EFFECTS OF THIS ACT ON COVERED INDIVIDUALS.

The General Assembly of North Carolina enacts:

Section 1. Article 51 of Chapter 58 of the General Statutes is amended  
by adding a new section to read:

"§ 58-51-36. Prescription drugs and pharmacy services benefits.

(a) This section applies to health benefit plans and insurers that provide  
prescription card benefits for prescription drugs and pharmacy services and to third-  
party administrators.

(b) This section does not apply to the following:

(1) Medicaid prescription drugs and pharmacy services benefits.

(2) Medicare prescription drugs and pharmacy services benefits.

(3) An entity that has its own facility, employs or contracts with  
physicians, pharmacists, nurses, and other health care personnel,  
and that dispenses prescription drugs from its own pharmacy to its  
employees and to beneficiaries of its health benefit plan, except  
that this section shall apply to an entity otherwise excluded that  
contracts with an outside pharmacy or group of pharmacies to  
provide prescription drugs and pharmacy services.

(4) Any federal program, clinical trial program, hospital, or other health care facility licensed pursuant to Chapter 131E or Chapter 122C of the General Statutes, when dispensing prescription drugs to its patients.

(5) The Teachers' and State Employees' Comprehensive Major Medical Plan.

(c) The purposes of this section are:

(1) To allow persons who have prescription drug and pharmacy service benefits under a health benefit plan to redeem prescription drug benefits at the pharmacies of their choice.

(2) To allow a pharmacy the option of filling its customers' prescriptions and redeeming prescription card benefits for prescriptions, without the necessity of a pharmacy provider contract.

(3) To allow a pharmacy to establish its own charge or price for prescription drugs and pharmacy services.

(4) To promote competition among retail pharmacies that redeem prescription card benefits for prescription drugs and pharmacy services.

(5) To prohibit anticompetitive restrictions in pharmacy provider contracts.

(d) As used in this section:

(1) 'Co-payment' means a type of cost-sharing with respect to paying for a prescription whereby the insured or beneficiary pays a specified, usually predetermined amount per prescription, based on the nature of the prescription, usually whether brand or generic, and with the insurer or health benefit plan paying the remainder of the charge. The co-payment is incurred at the time the prescription is filled by the pharmacy and the prescription card benefit is applied to the transaction. The co-payment may be a fixed or variable amount.

(2) 'Drug' or 'prescription drug' means any substance subject to the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 301-395, as amended.

(3) 'Health benefit plan' means an accident and health insurance policy or certificate; a hospital or medical service corporation contract; a health maintenance organization subscriber contract; a plan provided by a multiple employer welfare arrangement; or a plan provided by another benefit arrangement, to the extent permitted by the Employee Retirement Income Security Act of 1974, as amended, or by any waiver of or other exception to that Act provided under federal law or regulation. 'Health benefit plan' does not mean the Teachers' and State Employees' Comprehensive Major Medical Plan, nor any prepaid plan under the Teachers' and

1        State Employees' Comprehensive Major Medical Plan. 'Health  
2        benefit plan' also does not mean any plan implemented or  
3        administered through the Department of Health and Human  
4        Services or its representatives. 'Health benefit plan' does not  
5        mean any of the following kinds of insurance:

- 6        a.     Accident.  
7        b.     Credit.  
8        c.     Disability income.  
9        d.     Long-term or nursing home care.  
10       e.     Medicare supplement.  
11       f.     Specified disease.  
12       g.     Dental or vision.  
13       h.     Coverage issued as a supplement to liability insurance.  
14       i.     Workers' compensation.  
15       j.     Medical payments under automobile or homeowners.  
16       k.     Insurance under which benefits are payable with or without  
17             regard to fault and that are statutorily required to be  
18             contained in any liability policy or equivalent self-insurance.  
19       l.     Hospital income or indemnity.

20       (4)   'Insurer' means an insurance company subject to this Chapter, a  
21             hospital or medical service corporation organized under Article 65  
22             of this Chapter, a health maintenance organization organized  
23             under Article 67 of this Chapter, and a multiple employer welfare  
24             arrangement subject to Article 49 of this Chapter.

25       (5)   'Pharmacy' means a pharmacy that is required to be registered  
26             with the North Carolina Board of Pharmacy.

27       (6)   'Pharmacy provider contract' means a contract or agreement  
28             between a pharmacy and an insurer or a third-party administrator  
29             under which the pharmacy agrees to redeem prescription card  
30             benefits provided by a health benefit plan or insurer or provided  
31             or administered by a third-party administrator.

32       (7)   'Prescription card benefit' means a benefit for prescription drugs  
33             and related pharmacy services provided by a health benefit plan,  
34             an insurer, or provided or administered by a third-party  
35             administrator. A prescription card benefit is characterized by all  
36             of the following:

- 37       a.     The prescription card benefit is evidenced by a benefit  
38             identification number which may be contained or presented  
39             on a prescription card.  
40       b.     The prescription card benefit is redeemed and processed by  
41             the pharmacy at the time the prescription is filled through  
42             electronic transmission to the insurer or third-party  
43             administrator.

c. The insurer or third-party administrator requires the beneficiary or person redeeming the prescription card benefit to pay the pharmacy a co-payment predetermined by the insurer or third-party administrator.

d. The insurer or third-party administrator pays a portion of the cost for the prescription to the pharmacy.

(8) 'Redeem' means the process by which a person who has a prescription card benefit applies through a pharmacy to use the prescription card benefit on the cost of a prescription being filled by the pharmacy. This process includes an application for use of the prescription card benefit by the pharmacy to the insurer or third-party administrator, with the application usually being made by electronic transmission through computers, and with electronic transmission response from the insurer or third-party administrator verifying the prescription card benefit, the amount to be reimbursed to the pharmacy for the prescription transaction, and the amount, if any, of a co-payment to be paid by the beneficiary.

(9) 'Third-party administrator' means a person who does any of the following in connection with a health benefit plan or a prescription card benefit:

a. Directly or indirectly solicits, effects, or provides coverage.

b. Underwrites.

c. Collects charges or premiums.

d. Adjusts or settles claims.

(e) A person who has a prescription card benefit may redeem the prescription card benefit at any pharmacy in this State willing to redeem the prescription card benefit.

(f) A pharmacy may redeem a person's prescription card benefit irrespective of whether the pharmacy has entered into a pharmacy provider contract with the entity providing or administering the prescription card benefit. When a pharmacy redeems a prescription card benefit, the insurer or third-party administrator shall provide to the pharmacy as part of the information transmitted the renewal date of the person's prescription card benefits.

(g) An insurer or third-party administrator may not restrict or coerce a beneficiary's choice of pharmacy at which to redeem the prescription card benefit.

(h) Nothing in this section prevents a pharmacy from entering into a pharmacy provider contract.

(i) In redeeming prescription card benefits, a pharmacy may establish its own price or charge for the prescription, not to exceed the published average wholesale price plus five percent (5%), unless the pharmacy has agreed otherwise by the terms of a pharmacy provider contract.

(j) The pharmacy may charge the person redeeming the prescription card benefit for services that are in addition to the filling of the prescription, including, but not limited to, delivery services, unless the pharmacy has agreed otherwise by the terms of a pharmacy provider contract.

1     (k) If the price or charge for the prescription and pharmacy services established by  
2 the pharmacy is greater than the sum of the co-payment and the prescription card  
3 benefit, the person redeeming the prescription card benefit shall be responsible for  
4 paying the pharmacy the difference between the prescription card benefit and the  
5 price or charge for the prescription and services.

6     (l) At the earliest practical time, before filling the prescription and if the  
7 information is available, the pharmacy shall inform the person redeeming the  
8 prescription card benefit of any difference between the sum of the prescription card  
9 benefit and the co-payment and the price charged by the pharmacy. The pharmacy  
10 must also post a notice that is clearly visible and informs customers that the  
11 pharmacy's price or charge for the prescription and pharmacy services may exceed  
12 the co-payment.

13     (m) If a person redeems a prescription card benefit at a pharmacy that is not a  
14 party to a pharmacy provider contract with an insurer or third-party administrator,  
15 then the insurer or third-party administrator shall redeem the prescription card  
16 benefit and reimburse the pharmacy in the same manner, to the same extent, and at  
17 the same rate as it would have had the prescription card benefit been redeemed  
18 pursuant to a pharmacy provider contract.

19     (n) An insurer or third-party administrator that provides a prescription card  
20 benefit shall inform health benefit plan policyholders that the prescription card  
21 benefit may be redeemed at the pharmacy of the policyholder's choice. The  
22 information shall be communicated to the policyholder through reasonable means, on  
23 a timely basis, and at regular intervals. If the information provided states that the cost  
24 to the policyholder may be higher based on a pharmacy's price for the prescription  
25 and services, then the information shall also provide in the same manner and format  
26 that the cost to the policyholder may be lower based on the pharmacy's price for the  
27 prescription and services. The information required by this section shall be included  
28 in a written summary or description of the health benefit plan, plan summaries, and  
29 explanation of benefits as well as other written communications furnished to  
30 policyholders where prescription benefits are mentioned.

31     (o) An insurer or third-party administrator may communicate with its  
32 policyholders the names and locations of pharmacies that have agreed by pharmacy  
33 provider contracts to fill prescriptions without any charge to the policyholder other  
34 than the co-payment required by the insurer or third-party administrator. If the  
35 communication is made, however, it must also state in the same communication and  
36 in the same format that the prescription card benefit may be redeemed at any  
37 pharmacy in the State willing to redeem it.

38     (p) Any provision of a pharmacy provider contract that is in conflict with this  
39 section is void to the extent of the conflict.

40     (q) An insurer or third-party administrator that violates this section shall be subject  
41 to G.S. 58-2-70. However, if pursuant to G.S. 58-2-70(d), monetary civil penalties are  
42 directed by the Commissioner, for the purposes of this section, these penalties shall  
43 not be less than one thousand dollars (\$1,000) per day, nor more than ten thousand  
44 dollars (\$10,000) per day.

1 (r) If anything in this section conflicts with G.S. 58-51-37, this section controls to  
2 the extent of the conflict."

3 Section 2. If any provision of this act or the application of this act to any  
4 person or circumstance is held invalid, the other provisions or applications of this act  
5 shall be given effect without the invalid provisions or applications.

6 Section 3. This act applies to every health benefit plan and pharmacy  
7 provider contract as defined in Section 1 of this act that is delivered, issued for  
8 delivery, or renewed on or after October 1, 1999. For purposes of this act, renewal  
9 of a health benefit plan is presumed to occur on each anniversary of the date on  
10 which coverage was first effective on the person or persons covered by the health  
11 benefit plan.

12 Section 4. Of the funds appropriated to the Department of Insurance for  
13 the 1999-2000 fiscal year, the sum of five thousand dollars (\$5,000) shall be used by  
14 the Department to monitor the effects of this act on persons whose health insurance  
15 coverage provides prescription card benefits.

16 Section 5. This act is effective when it becomes law and expires  
17 September 30, 2003.

# VISITOR REGISTRATION SHEET

HOUSE SMALL BUSINESS

Name of Committee

July 7

, 1999

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

| <u>NAME</u>         | <u>FIRM OR AGENCY AND ADDRESS</u>     |
|---------------------|---------------------------------------|
| Roy Murray          | North Carolina Propane Gas Assoc.     |
| <del>Virginia</del> | <del>Grove &amp; Assoc. - NCPGA</del> |
| Rod Adcock          | BCBSNC                                |
| Henry Weiland       | NCLPGA                                |
| Michael Lewis       | NCLPGA                                |
| Ken Wright          | BCBSNC                                |
| Romano Hart         | NC Propane Gas Assoc.                 |
| Mike Aruley         | NCLPGA                                |
| Mike Boggs          | NC Propane Gas Association            |
| Larry Jordan        | N.C. Propane Gas Association          |
| John McArthur       | CONCRETE ELECTRIC                     |
| David McLeod        | NCDH & CS                             |
| N. DAND SMITH       | NCDH & CS                             |
| Buel Williamson     | NCLPGA                                |
| David Fletcher      | NCLPGA                                |
| DOD KICH            | NCLPGA                                |
| Emerson Doree       | NCLPGA                                |
| ED MYERS            | NCLPGA                                |
| John Rous           | Poyner & Spruill                      |
| Marrin Musse/white  | "                                     |
| Leg M. Killian      | Moore & Van Allen                     |
| Harold Webb         | Chambers, ASB                         |
| Miscella Swindell   | AARP                                  |
| O.K. Beathy         | AARP                                  |
| Olene Dales         | AARP                                  |
| Tommythomas         | Harold's cons. Retail Pharmacy        |
| MIKE JAMES          | NCRPA                                 |
| George Heam         | N.C. Retail Pharmacy Assn             |
| Graff Preston       | NCRMA                                 |
| Andy Ellen          | NCRMA                                 |
| Melissa Durkee      | NCAP                                  |
| BOB GARRETT         | ACAP                                  |



# VISITOR REGISTRATION SHEET

HOUSE SMALL BUSINESS

Name of Committee

July 7, 1999

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

| <u>NAME</u>       | <u>FIRM OR AGENCY AND ADDRESS</u> |
|-------------------|-----------------------------------|
| LYNN WILSON       | SEANC                             |
| DARRELL ARNOLD    | SEANC                             |
| Stephanie Newbold | NC Equity Intern                  |
| Gandi Summers     | NCEquity                          |
| Adam Sparrow      | NCHAC                             |
| Arnie KATZ        | Advanced Energy                   |
| Pich Ly           | DHHS                              |
| Winnie Schlegel   | NC NURSES ASSOCIATION             |
| Hove Wang         | NCPGA -                           |
| Roberta Long      | NCPGA                             |
| Vernon Morrey     | NCPGA                             |
| Dennis Cullen     | NCPGA                             |
| Mad Green         | NCAE                              |
| Bill Wilson       | NCAE                              |
| Chris Williams    | Chris Williams Inc.               |
| John Graham       | GLAXO WELLCOME INC.               |
| John Gray         | N.C. Man. Housing                 |
| Robert Owens      | N.C. POPPANE                      |
| Robert PASCHAL    | Young, Green & Henderson, P.A.    |
| Gary Mahoney      | NC ASSN OF HEALTH PLANS           |
| Lori Ann Harris   | BCBS                              |
| Matthew Orlowski  | DHHS                              |
| Crystal Wiley     | DHHS                              |
| Chris Hoke        | DHHS                              |
| Jamie W. Wiley MD | DHHS, DPH                         |
| Chris Porter      | Bone & Associates                 |
| Imogene Baine     | NCMS                              |
| Joe Greene        | NEWS                              |
| Stacy Flannery    | NGHCA                             |